

EXHIBIT A

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Attorneys for Defendant and Counterclaimant Empire Distribution Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TWENTIETH CENTURY FOX
TELEVISION, a division of
TWENTIETH CENTURY FOX
FILM CORPORATION, a Delaware
company, and FOX
BROADCASTING COMPANY, a
Delaware corporation.

Plaintiffs,

V.

EMPIRE DISTRIBUTION, INC., a
California corporation,

Defendant.

Case No. 2:15-cv-02158-PA-FFM

Hon. Percy Anderson

**EMPIRE DISTRIBUTION, INC.'S
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Caption continued on next page.

EMPIRE DISTRIBUTION, INC., a
California corporation,

Counterclaimant,

V.

TWENTIETH CENTURY FOX
TELEVISION, a division of
TWENTIETH CENTURY FOX
FILM CORPORATION, a Delaware
company, and FOX
BROADCASTING COMPANY, a
Delaware corporation,

Counter-Defendants.

PROPOUNDING PARTY: EMPIRE DISTRIBUTION, INC.

RESPONDING PARTIES: **TWENTIETH CENTURY FOX
TELEVISION, TWENTIETH CENTURY FOX
FILM CORPORATION, AND FOX
BROADCASTING COMPANY**

SET NO.: **ONE**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant and
2 Counterclaimant Empire Distribution, Inc. ("EMPIRE DISTRIBUTION") hereby
3 serves this Request for Production of Documents upon Plaintiffs and Counter-
4 Defendants Twentieth Century Fox Television, Twentieth Century Fox Film
5 Corporation, and Fox Broadcasting Company (collectively "FOX").

6 **INSTRUCTIONS**

7 A. Pursuant to Fed. R. Civ. P. 34 (b), FOX shall respond in writing to
8 each of these requests and produce all responsive documents within its possession,
9 custody or control, within thirty (30) days after the service of these requests, at the
10 offices of Troutman Sanders, LLP, located at 5 Park Plaza, Suite 1400, Irvine, CA
11 92614.

12 B. Pursuant to Fed. R. Civ. P. 34 (b)(1)(C), FOX shall produce any
13 ELECTRONICALLY STORED INFORMATION in accordance with the ESI
14 Production Format attached as Exhibit A, unless otherwise agreed to in writing by
15 the parties.

16 C. If FOX is unable to comply with any particular request, in whole or in
17 part, FOX shall state in its response that a diligent search and reasonable inquiry
18 has been made in an effort to locate the items and provide the reason for its inability
19 to comply – i.e., that the document never existed, has been lost, stolen or destroyed,
20 or is in the possession, custody or control of another person or entity.

21 D. If FOX objects to any particular request, in whole or in part, FOX shall
22 state the specific reason for the objection and the specific items being withheld
23 based on the objection.

24 E. If any document(s) is withheld under a claim of privilege, FOX shall
25 provide a "privilege log" with its responses, stating the specific basis of the
26 privilege and describing the document(s) being withheld in sufficient detail to
27 enable EMPIRE DISTRIBUTION to assess the applicability of the privilege
28 including the following information:

1. the general nature of the document (letter, e-mail, memo, etc.);
2. the general subject matter of the document;
3. the date of the document;
4. the identity and position of its author;
5. the identity and position of all addressees and recipients; and
6. the location of the document.

DEFINITIONS

The following definitions apply to each of the document requests:

9 A. The term “COMPLAINT” refers to the Complaint for Declaratory
10 Relief filed by FOX on March 23, 2015 in this case, and any subsequent
11 amendments thereto.

12 B. The term “COUNTERCLAIMS” refers to the Counterclaims filed by
13 EMPIRE DISTRIBUTION against FOX on June 4, 2015 in this case, and any
14 subsequent amendments thereto.

15 C. The term “FOX” refers collectively to Plaintiffs and Counter-
16 Defendants Twentieth Century Fox Television, Twentieth Century Fox Film
17 Corporation, and Fox Broadcasting Company, including their current or former
18 officers, directors, employees, principals, agents, representatives, attorneys,
19 accountants, parents, subsidiaries, affiliates and any other person or entity acting on
20 their behalf.

21 D. The term “EMPIRE DISTRIBUTION” refers to Defendant and
22 Counterclaimant Empire Distribution, Inc., including its current or former officers,
23 directors, employees, principals, agents, representatives, attorneys, accountants,
24 parents, subsidiaries, affiliates and any other person or entity acting on its behalf.

25 E. The term "*EMPIRE SERIES*" refers to FOX's musical dramatic
26 television series that is described in paragraph 10 of the COMPLAINT.

1 F. The term “*EMPIRE SERIES MUSIC*” refers to any music that is
2 produced, composed, performed and/or featured on or in connection with the
3 *EMPIRE SERIES* as described in paragraph 12 of the COMPLAINT.

4 G. The term “DOCUMENTS” is used in its customary and broadest sense
5 to include all writings, drawings, graphs, charts, photographs, sound recordings,
6 images, and other data or data compilations stored in any medium from which
7 information can be obtained, including all COMMUNICATIONS and
8 ELECTRONICALLY STORED INFORMATION.

9 H. The term “COMMUNICATIONS” refers to any transmission of
10 information between two or more persons including, but not limited to, letters,
11 facsimiles, correspondence, memos, e-mails, text messages, instant messages, and
12 social network communications including, but not limited to, messages and other
13 postings on social network sites such as Facebook and Twitter.

14 I. The term “ELECTRONICALLY STORED INFORMATION” shall
15 include any information stored in an electronic medium (such as electrical, digital,
16 magnetic, wireless, optical, electromagnetic or similar capabilities) including, but
17 not limited to, e-mail, computer files, internet files, voice-mail, photos, graphics,
18 text messages, instant messages, and social network communications including, but
19 not limited to, messages and other postings on social network sites such as
20 Facebook and Twitter.

REQUESTS FOR PRODUCTION

22 | REQUEST FOR PRODUCTION NO. 1:

23 All DOCUMENTS reflecting, referring or relating to FOX's creation and
24 development of the *EMPIRE SERIES*, from the time the series was first conceived
25 through the date of the first pilot episode on January 7, 2015, including, without
26 limitation, any notes, drafts, memos, treatments, scripts, scriptments, synopsis,
27 outlines, pitches or COMMUNICATIONS relating to the concepts, themes, plots,
28 premises, topics and/or characters of the series.

1 **REQUEST FOR PRODUCTION NO. 2:**

2 All COMMUNICATIONS between FOX and creators Lee Daniels or Danny
3 Strong, or their agents/representatives, regarding the conception, creation or
4 development of the *EMPIRE SERIES*, from the time the series was first conceived
5 through the date of the first pilot episode on January 7, 2015.

6
7 **REQUEST FOR PRODUCTION NO. 3:**

8 All DOCUMENTS reflecting, referring or relating to FOX's decision to use
9 the "Empire" name for the *EMPIRE SERIES* including, without limitation, when,
10 where, why, and by whom the name was chosen, any artistic relevance of the name
11 to the show, any alternate names for the series that were considered, proposed or
12 discussed, and all meetings or COMMUNICATIONS regarding the use of the name
13 "Empire," or any alternate names, for the series.

14
15 **REQUEST FOR PRODUCTION NO. 4:**

16 All DOCUMENTS reflecting, referring or relating to FOX's research,
17 investigation or due diligence, prior to the date of the first pilot episode of the
18 *EMPIRE SERIES* on January 7, 2015, regarding any use or trademarks of the name
19 "Empire" by any other company.

20
21 **REQUEST FOR PRODUCTION NO. 5:**

22 All DOCUMENTS reflecting, referring or relating to any research,
23 investigation or due diligence by FOX regarding EMPIRE DISTRIBUTION,
24 including, but not limited to, its use or trademark of the "Empire" name.

25
26 **REQUEST FOR PRODUCTION NO. 6:**

27 All DOCUMENTS reflecting, referring or relating to any attempts by FOX to
28 register the name "Empire", or any other name, mark, logo or symbol relating to the

1 *EMPIRE SERIES*, as a trademark, including any COMMUNICATIONS relating
2 thereto.

3

4 **REQUEST FOR PRODUCTION NO. 7:**

5 All DOCUMENTS reflecting, referring or relating to any consumer or
6 market research surveys conducted by FOX regarding the “Empire” name.

7

8 **REQUEST FOR PRODUCTION NO. 8:**

9 All DOCUMENTS reflecting, referring or relating to FOX’s alleged
10 “intellectual property rights in and to the fictional television series *Empire* and the
11 music therefrom, including copyright and trademark rights,” as alleged in paragraph
12 3 of the COMPLAINT.

13

14 **REQUEST FOR PRODUCTION NO. 9:**

15 All DOCUMENTS reflecting, referring or relating to FOX’s design of the
16 “Empire” mark/logo for the *EMPIRE SERIES* including, without limitation, all
17 drafts, sketches, designs, outlines, depictions or illustrations of the “Empire”
18 mark/logo (including without limitation those depicted in paragraph 25 of the
19 COMPLAINT and paragraph 21 of the COUNTERCLAIMS), any drafts, sketches,
20 designs, outlines, depictions or illustrations of any alternate designs of the
21 “Empire” mark/logo, and all COMMUNICATIONS relating thereto.

22

23 **REQUEST FOR PRODUCTION NO. 10:**

24 All DOCUMENTS reflecting, referring or relating to FOX’s use of a city
25 skyline graphic in conjunction with the “Empire” mark/logo (as depicted in
26 paragraph 22 of the COUNTERCLAIMS) including, without limitation, all
27 COMMUNICATIONS regarding such use of the city skyline graphic.

1 **REQUEST FOR PRODUCTION NO. 11:**

2 All DOCUMENTS reflecting, referring or relating to any advertisements,
3 promotions or marketing efforts by FOX using the “Empire” mark/logo.

5 **REQUEST FOR PRODUCTION NO. 12:**

6 All DOCUMENTS reflecting, referring or relating to the promotion,
7 advertisement, or marketing of the *EMPIRE SERIES MUSIC* including, but not
8 limited to, all contracts, agreements, or COMMUNICATIONS relating thereto.

10 **REQUEST FOR PRODUCTION NO. 13:**

11 All DOCUMENTS reflecting, referring or relating to the sale, license,
12 distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores,
13 online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere
14 else, including, but not limited to, all contracts, agreements, or
15 COMMUNICATIONS relating thereto.

17 **REQUEST FOR PRODUCTION NO. 14:**

18 All COMMUNICATIONS between FOX and the main cast members of the
19 *EMPIRE SERIES* or their agents/representatives, including, but not limited to,
20 Terrance Howard, Taraji Henson, Trai Byers, Jussie Smollett, Bryshere Gray,
21 Kaitlin Doubleday, Grace Gealey and Malik Yoba, regarding the concept of the
22 series prior to the date of the first pilot episode on January 7, 2015.

24 **REQUEST FOR PRODUCTION NO. 15:**

25 All agreements, contracts or COMMUNICATIONS between FOX and any
26 musicians who produce, perform or compose music for the *EMPIRE SERIES*,
27 regarding the production, promotion, advertisement, sale, license, distribution or
28 release of the *EMPIRE SERIES MUSIC*, including, but not limited to, Timbaland

1 (aka Timothy Moseley), Ne-Yo (aka Schaffer Chimere Smith), Jussie Smollett,
2 Bryshere Gray, Gladys Knight, Anthony Hamilton, Sway Calloway, Raven
3 Symone, Estelle, Mary J. Blige, Snoop Dogg, Rita Ora, Juicy J, Patti LaBelle and
4 Charles Hamilton, or any of their agents/representatives.

5

6 **REQUEST FOR PRODUCTION NO. 16:**

7 All contracts, agreements, marketing plans and COMMUNICATIONS
8 between FOX and Columbia Records regarding the promotion, advertisement, sale,
9 license, distribution or release of *EMPIRE SERIES MUSIC*.

10

11 **REQUEST FOR PRODUCTION NO. 17:**

12 All internal FOX COMMUNICATIONS regarding the production, sale,
13 license, promotion, advertisement, marketing, distribution or release of the
14 *EMPIRE SERIES MUSIC*.

15

16 **REQUEST FOR PRODUCTION NO. 18:**

17 All DOCUMENTS reflecting, referring or relating to FOX's online account
18 with Mediabase.

19

20 **REQUEST FOR PRODUCTION NO. 19:**

21 All DOCUMENTS reflecting, referring or relating to the performance,
22 presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations,
23 concerts, live performances, events, physical record stores and other venues.

24

25 **REQUEST FOR PRODUCTION NO. 20:**

26 Digital and hard copies of the *EMPIRE SERIES* including each season and
27 episode to date.

1 **REQUEST FOR PRODUCTION NO. 21:**

2 Digital and hard copies of all *EMPIRE SERIES MUSIC*.

3

4 **REQUEST FOR PRODUCTION NO. 22:**

5 All DOCUMENTS reflecting, referring or relating to any search or
6 investigation of any record, including but not limited to the records of the United
7 States Patent and Trademark Office, state trademark records, and business
8 directories conducted by FOX that relate to the “Empire” mark or any similar name
9 or mark used by FOX or anyone else, including any trademark search report for any
10 mark or designation that consists of or includes the word “Empire” or any variant of
11 that word.

12

13 **REQUEST FOR PRODUCTION NO. 23:**

14 All DOCUMENTS reflecting, referring or relating to any legal opinion that
15 FOX is relying on in this proceeding concerning its right to use the “Empire” mark
16 or any similar mark or name.

17

18 **REQUEST FOR PRODUCTION NO. 24:**

19 All DOCUMENTS reflecting, referring or relating to any agreements, written
20 or oral, between FOX and anyone else concerning the use of the “Empire” mark.

21

22 **REQUEST FOR PRODUCTION NO. 25:**

23 All DOCUMENTS reflecting, referring or relating to any of FOX’s present
24 or prospective sales, marketing or business plans/strategies regarding products or
25 services provided in connection with the “Empire” mark, including the *EMPIRE*
26 *SERIES* and *EMPIRE SERIES MUSIC*.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 All DOCUMENTS sufficient to identify every existing or intended good or
3 service offered or sold by FOX in connection with the “Empire” mark, and the date
4 on which each such good or service was first offered or sold, or will be offered or
5 sold.

6

7 **REQUEST FOR PRODUCTION NO. 27:**

8 All DOCUMENTS sufficient to show the channels of trade or distribution
9 (e.g., retail, wholesale, Internet, catalog, etc.) through which FOX has sold or
10 offered for sale, currently sell or offer for sale, or plan to sell or offer for sale any
11 goods or services identified by the “Empire” mark.

12

13 **REQUEST FOR PRODUCTION NO. 28:**

14 All DOCUMENTS sufficient to show all geographical areas (by city and
15 state; and, if outside the United States, by country) in which FOX has sold, or
16 offered for sale, goods or services under or in connection with the “Empire” mark.

17

18 **REQUEST FOR PRODUCTION NO. 29:**

19 All DOCUMENTS reflecting, referring or relating to any study regarding
20 actual or likely purchasers of goods or services offered for sale, sold, promoted, or
21 advertised under or in association with the “Empire” mark.

22

23 **REQUEST FOR PRODUCTION NO. 30:**

24 All DOCUMENTS sufficient to show each purchase of any good or service
25 offered for sale, sold, promoted, or advertised under or in association with the
26 “Empire” mark.

1 **REQUEST FOR PRODUCTION NO. 31:**

2 All DOCUMENTS reflecting, referring or relating to FOX's revenues,
3 expenses, and profits relating to all goods and services sold, or offered for sale,
4 under or in association with the "Empire" mark, including the *EMPIRE SERIES* and
5 *EMPIRE SERIES MUSIC*.

6

7 **REQUEST FOR PRODUCTION NO. 32:**

8 All DOCUMENTS reflecting, referring or relating to the total volume of
9 sales for all goods and services sold under or in association with the "Empire"
10 mark, including the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

11

12 **REQUEST FOR PRODUCTION NO. 33:**

13 All DOCUMENTS reflecting, referring or relating to the amounts spent by
14 FOX in each year to advertise, market and promote goods or services under or in
15 association with the "Empire" mark or variations thereof, including the *EMPIRE*
16 *SERIES* and *EMPIRE SERIES MUSIC*.

17

18 **REQUEST FOR PRODUCTION NO. 34:**

19 All DOCUMENTS reflecting, referring or relating to any publicity or news
20 relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*, including but not
21 limited to press releases, articles, interviews, and public relations pieces appearing
22 in the media, press, blogs, websites, internet, journals, newspapers, magazines or
23 trade publications.

24

25 **REQUEST FOR PRODUCTION NO. 35:**

26 All DOCUMENTS reflecting, referring or relating to anyone other than FOX
27 that has used or is using the designation or word "Empire" in the music industry.

1 **REQUEST FOR PRODUCTION NO. 36:**

2 All DOCUMENTS sufficient to identify by name and address each entity or
3 individual authorized to sell, distribute, promote, advertise or market any goods or
4 services identified by FOX's "Empire" mark, including in connection with the
5 *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

6

7 **REQUEST FOR PRODUCTION NO. 37:**

8 All DOCUMENTS reflecting, referring or relating to any cease-and-desist
9 letter, demand, dispute, complaint, objection, protest, lawsuit, threatened lawsuit, or
10 expression of concern by FOX to a third party, or by any third party to FOX,
11 relating to FOX's or the third party's existing or intended use of the "Empire"
12 mark.

13

14 **REQUEST FOR PRODUCTION NO. 38:**

15 All DOCUMENTS reflecting, referring or relating to the date FOX first
16 became aware of EMPIRE DISTRIBUTION and/or its use of the "Empire" name
17 and any subsequent COMMUNICATIONS regarding EMPIRE DISTRIBUTION'S
18 use of that mark.

19

20 **REQUEST FOR PRODUCTION NO. 39:**

21 All DOCUMENTS reflecting, referring or relating any actual or potential,
22 direct or indirect, competition between the products or services that FOX offers,
23 offered, or intends to offer under its "Empire" mark and the products or services
24 that EMPIRE DISTRIBUTION offers or offered under its "Empire" marks.

25

26 **REQUEST FOR PRODUCTION NO. 40:**

27 All DOCUMENTS reflecting, referring or relating to any instance in which
28 any person or entity made any statement, comment, inquiry or question regarding

1 any actual or potential association, affiliation, connection, correlation, relation or
2 sponsorship between the *EMPIRE SERIES* and/or *EMPIRE SERIES MUSIC*, on the
3 one hand, and EMPIRE DISTRIBUTION, on the other hand.

4

5 **REQUEST FOR PRODUCTION NO. 41:**

6 All COMMUNICATIONS by or from FOX, FOX's customers or other
7 persons, expressing any actual or potential confusion, association, affiliation,
8 connection, correlation, relation or sponsorship between FOX and EMPIRE
9 DISTRIBUTION and their respective goods or services.

10

11 **REQUEST FOR PRODUCTION NO. 42:**

12 All COMMUNICATIONS by or from FOX, FOX's customers or other
13 persons, expressing any lack of confusion, association, affiliation, connection,
14 correlation, relation or sponsorship between FOX and EMPIRE DISTRIBUTION
15 and their respective goods or services.

16

17 **REQUEST FOR PRODUCTION NO. 43:**

18 All DOCUMENTS reflecting, referring or relating to whether or not FOX's
19 use of the "Empire" mark does, may or will infringe, or cause any actual or
20 potential confusion with, EMPIRE DISTRIBUTION'S "Empire" marks.

21

22 **REQUEST FOR PRODUCTION NO. 44:**

23 All DOCUMENTS reflecting, referring or relating to any poll, survey, study,
24 report, analysis, or evaluation done by FOX or on FOX's behalf that relates to the
25 "Empire" mark.

26

27

28

1 **REQUEST FOR PRODUCTION NO. 45:**

2 All DOCUMENTS reflecting, referring or relating to any witness retained or
3 specially employed by FOX to provide expert testimony in the case, including, but
4 not limited to, all DOCUMENTS that reflect, refer, or relate to any opinions or
5 conclusions of the expert, the basis of any such opinions or conclusions, any facts
6 or data considered by the expert in forming any such opinions or conclusions, and
7 all DOCUMENTS reviewed or relied upon by the expert in forming his/her
8 opinions or conclusions.

9

10 **REQUEST FOR PRODUCTION NO. 46:**

11 All COMMUNICATIONS between FOX's attorneys and any expert witness
12 who is required to provide a report under Fed. R. Civ. P. 26(a)(2)(B), to the extent
13 the COMMUNICATION relates to the compensation for the expert's study or
14 testimony; identifies facts or data that FOX's attorneys provided and that the expert
15 considered in forming his/her opinions to be expressed; or identifies assumptions
16 that FOX's attorneys provided and that the expert relied on in forming the opinions
17 to be expressed.

18

19 **REQUEST FOR PRODUCTION NO. 47:**

20 All DOCUMENTS supporting the allegations in paragraph 1 of FOX's
21 COMPLAINT.

22

23 **REQUEST FOR PRODUCTION NO. 48:**

24 All DOCUMENTS supporting the allegations in paragraph 11 of FOX's
25 COMPLAINT.

26
27
28

1 **REQUEST FOR PRODUCTION NO. 49:**

2 All DOCUMENTS supporting the allegations in paragraph 12 of FOX's
3 COMPLAINT.

4

5 **REQUEST FOR PRODUCTION NO. 50:**

6 All DOCUMENTS supporting the allegations in paragraph 20 of FOX's
7 COMPLAINT.

8

9 **REQUEST FOR PRODUCTION NO. 51:**

10 All DOCUMENTS supporting the allegations in paragraph 21 of FOX's
11 COMPLAINT.

12

13 **REQUEST FOR PRODUCTION NO. 52:**

14 All DOCUMENTS supporting the allegations in paragraphs 22 of FOX's
15 COMPLAINT.

16

17 **REQUEST FOR PRODUCTION NO. 53:**

18 All DOCUMENTS supporting the allegations in paragraph 23 of FOX's
19 COMPLAINT.

20

21 **REQUEST FOR PRODUCTION NO. 54:**

22 All DOCUMENTS supporting the allegations in paragraph 24 of FOX's
23 COMPLAINT.

24

25 **REQUEST FOR PRODUCTION NO. 55:**

26 All DOCUMENTS supporting the allegations in paragraphs 25 of FOX's
27 COMPLAINT.

1 **REQUEST FOR PRODUCTION NO. 56:**

2 All DOCUMENTS supporting the allegations in paragraph 26 of FOX's
3 COMPLAINT.

5 **REQUEST FOR PRODUCTION NO. 57:**

6 All DOCUMENTS supporting the allegations in paragraph 27 of FOX's
7 COMPLAINT.

9 **REQUEST FOR PRODUCTION NO. 58:**

10 All DOCUMENTS upon which FOX's answer or affirmative defenses to the
11 COUNTERCLAIMS are based including, but not limited to, its first affirmative
12 defense purportedly based on the First Amendment to the United States
13 Constitution.

15 **REQUEST FOR PRODUCTION NO. 59:**

16 All DOCUMENTS identified or referenced in FOX's Initial Disclosures,
17 pursuant to Fed. R. Civ. P. 26(a)(1).

19 Dated: July 17, 2015

20 TROUTMAN SANDERS LLP

21 By: 

22 Paul L. Gale
Peter N. Villar
John M. Bowler
Michael D. Hobbs

23
24 *Attorneys for Defendant and
25 Counterclaimant Empire
Distribution Inc.*

Exhibit A

ESI Production Format

Format of Production:

Both electronically stored information (“ESI”) and hard copy paper files should be produced in image format with the exception of certain ESI formats identified in the technical specifications below. Images shall be endorsed with a bates number at the page level accompanied with text files containing the searchable text and a delimited data load file containing associated document information and metadata for each document. The original native files shall be preserved.

ESI shall be collected in a manner that preserves metadata to the extent reasonably possible. ESI shall be produced in a format that is reasonably usable to same extent as the original native file. Duplicates shall be removed from all ESI productions in a manner that does not break up document families – in other words, emails shall be treated as duplicates only if they are identical both in their bodies and in all their attachments, and an email attachment shall not be treated as a duplicate merely because an identical copy of the document exists as a separate file. ESI duplicates shall be identified by using industry standard MD5 or SHA-1 algorithms to create and compare hash values for exact matches only. A duplicate custodian field [“DupCustodian”] shall be provided that identifies each custodian from whom the document was collected, but not produced because it was removed as a duplicate. Any duplicate ESI that is not produced shall be preserved.

Specific technical production format details are outlined below:

- Native ESI and paper shall be converted to black and white 300 dpi TIF format image files with Group IV compression and one TIF file per page. Upon written request, a Party shall produce color images for selected documents. Documents produced in color shall be produced as JPEG images, 200 dpi or higher and 24-bit color depth. Each color document image file shall be named with the unique Bates Number of the first page of the document in question followed by the file extension “JPG”;
- For documents whose native format is a spreadsheet, database, audio or video the original native files should be produced in addition to a single page TIF placeholder for each document. The placeholder should be endorsed with the original filename of the document, “Produced In Native Format,” and endorsed with the Bates number assigned to that document. The produced native file should be named with the Bates number assigned to that document;
- For documents whose native format is MS PowerPoint, the original native files and single page black and white Group IV TIF format image files shall be produced (with any comments shown);
- Each image file shall be named with its unique Bates number and branded with the Bates number and confidentiality designation (if any) on the face of the image in a location that does not cover up any of the documents original text or images;

- One text file per document shall be provided for all ESI and scanned paper documents containing searchable text for the document. Extracted full text shall be provided for ESI, and OCR text shall be provided for scanned paper. OCR generated text should only be used for ESI if extracted text is not available or if the document has been redacted. Text files shall be named with the beginning Bates number of the corresponding document and a path to the text file within the production should be provided in the data load file;
- An image identification file shall be provided containing a row of information for every image included in the production. The format of the file should be industry standard IPRO format (LFP), Concordance Image format (OPT) or other delimited file format using common ASCII (American Standard Code for Information Interchange) characters for field identification that includes one row of information for each image with fields for image Bates number, relative path to the image, image filename, page number, and document start identifier to designate the first page of a document;
- All document information and metadata for each document shall be produced in an ASCII (American Standard Code for Information Interchange) delimited data load file with one row for each document produced and shall include the document information and metadata identified in the table below. The format of the file shall be industry standard Concordance DAT file format or a delimited text file that uses ASCII character delimiters as follows: Field Delimiter = “” ASCII (020), Text Quote = “b” ASCII (254), Multi-Entry = “;” ASCII (059)

Document Information and Metadata To Be Produced

Field	Data Type	Paper	Native Files & Email Attachments	Email
BegDoc	Integer - Text	Starting Bates #	Starting Bates #	Starting Bates #
EndDoc	Integer - Text	Ending Bates #	Ending Bates #	Ending Bates #
BegAttach	Integer - Text	Starting bates # of document family	Starting bates # of document family	Starting bates # of document family
EndAttach	Integer - Text	Ending bates # of document family	Ending bates # of document family	Ending bates # of document family
Custodian	Text	Name of person the document was collected from	Name of person the document was collected from	Name of person the document was collected from
DupCustodian	Text – paragraph Separate entries with “;”		All names of people the document was collected from even if removed from production as a duplicate	All names of people the document was collected from even if removed from production as a duplicate
Folder	Text		File path/folder structure for the original native file as it existed at the time of collection	File path/folder structure for the original native file as it existed at the time of collection. Should include full path and folder locations of email container files such as PST and NSF and the internal path of the email within

				those files
From	Text - paragraph			Sender of message
To	Text – paragraph Separate entries with “;”			Recipients of message
CC	Text – paragraph Separate entries with “;”			Copied recipients
BCC	Text – paragraph Separate entries with “;”			Blind copied recipients
Subject	Text - paragraph			Subject of message
DateSent	Date (mm/dd/yyyy)			Date message sent
TimeSent	Time (hh:mm:ss)			Time message sent
DateReceived	Date (mm/dd/yyyy)			Date message received
TimeRecv	Time (hh:mm:ss)			Time message received
FileName	Text - paragraph		Name of original file including extension	Name of original file including extension
FileExtension	Text		Extension of original file	Extension of original file
DateCreated	Date/Time (mm/dd/yyyy)		Date file was created	
DateModified	Date/Time (mm/dd/yyyy)		Date file was last modified	
Title	Text - paragraph		Title from document metadata	
Author	Text - paragraph		Document author from metadata	
Company	Text - paragraph		Document company or organization from metadata	
FileHash	Text		MD5 or SHA-1 Hash Value of document	MD5 or SHA-1 Hash Value of document
NativeLink	Text - paragraph		Path including filename to the associated native file if produced (Relative Path)	Path including filename to the associated native file if produced (Relative Path)
TextLink	Text - paragraph	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)

PROOF OF SERVICE

I, Anabel Pineda, declare:

I am a citizen of the United States and employed in Orange County, CA. I am over the age of 18 and not a party to the within action; my business address is 5 Park Plaza, Suite 1400, Irvine, CA 92614-2545.

On July 17, 2015, I served the following document(s) described as:

**EMPIRE DISTRIBUTION, INC.'S REQUEST FOR PRODUCTION OF
DOCUMENTS**

BY FACSIMILE TRANSMISSION: As follows: The papers have been transmitted to a facsimile machine by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The copy of the notice or other paper served by facsimile transmission shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted to the addressee(s).

BY MAIL: As follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, CA, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT MAIL: As follows: I am readily familiar with the firm's practice of collection and processing correspondence for overnight mailing. Under that practice, it would be deposited with overnight mail on that same day prepaid at Irvine, CA in the ordinary course of business.

On the following parties:

Molly M. Lens
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-6035
Email: mlens@omm.com

1 Marvin S. Putnam
2 **LATHAM & WATKINS LLP**
3 10250 Constellation Blvd., #300
4 Los Angeles, California 90067-6203
5 Email: marvin.putnam@lw.com

6
7 I declare that I am employed in the office of a member of the bar of this court at whose
8 direction the service was made.

9
10 Executed on July 17, 2015, at Irvine, CA.

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10 Anabel Pineda

EXHIBIT B

1 DANIEL M. PETROCELLI (S.B. #97802)
2 dpetrocelli@omm.com
3 MOLLY M. LENZ (S.B. #283867)
4 mlens@omm.com
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7 O'MELVENY & MYERS LLP
8 1999 Avenue of the Stars, 7th Floor
9 Los Angeles, California 90067-6035
Telephone: (310) 553-6700
Facsimile: (310) 246-6779

7 Attorneys for Twentieth Century Fox
8 Television, a division of Twentieth Century
Fox Film Corporation, and Fox Broadcasting
9 Company

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 TWENTIETH CENTURY FOX
14 TELEVISION, a division of
15 TWENTIETH CENTURY FOX FILM
16 CORPORATION, a Delaware company,
17 and FOX BROADCASTING
COMPANY, a Delaware corporation,

18 Plaintiffs,

19 v.

20 EMPIRE DISTRIBUTION, INC., a
21 California corporation,

22 Defendant.

23 And related counterclaims

Case No. 2:15-cv-2158

Hon. Percy Anderson

**FOX'S RESPONSE TO
DEFENDANT'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS**

25 **PROPOUNDING PARTY:** EMPIRE DISTRIBUTION, INC.

26 **RESPONDING PARTY:** FOX

27 **SET NO.:** ONE

1 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the
2 Local Rules of the United States District Court for the Central District of California
3 (the “Local Rules”), Plaintiffs and Counterclaim Defendants Twentieth Century
4 Fox Television, a division of Twentieth Century Fox Film Corporation, and Fox
5 Broadcasting Company (collectively, “Fox”) hereby submit their responses and
6 objections to Defendant and Counterclaimant Empire Distribution, Inc.’s First Set
7 of Requests for Production of Documents (“Requests” and, individually,
8 “Request”), served on July 17, 2015, as follows:

GENERAL OBJECTIONS

10 In addition to Fox's specific responses and objections to each Request as
11 provided below, Fox makes the following general objections to the Requests:

12 1. Fox objects to each and every Request, definition, and instruction that
13 purports to impose obligations beyond those required or permitted by the Federal
14 Rules of Civil Procedure or the Local Rules.

15 2. Fox objects to each and every Request, definition, and instruction to
16 the extent it contains inaccurate, incomplete, or misleading descriptions of the facts,
17 persons, relationships, events, and pleadings underlying this action. The production
18 of any information shall not constitute Fox's agreement with or acquiescence to any
19 such description.

20 3. Fox objects to each and every Request to the extent it seeks
21 information that is neither relevant to any claim or defense in this action, nor
22 reasonably calculated to lead to the discovery of admissible evidence.

23 4. Fox objects to each and every Request to the extent it is vague,
24 ambiguous, unclear, or fails to identify the requested documents with reasonable
25 particularity as required by Federal Rule of Civil Procedure 34. To the extent that a
26 Request requires subjective judgment on the part of Fox as to what information is
27 requested, Fox will produce responsive, non-privileged documents according to its
28 understanding of the Request.

1 5. Fox objects to each and every Request to the extent it is overbroad,
2 onerous, and unduly burdensome and, thus, outside the scope of permissible
3 discovery.

4 6. Fox objects to each and every Request to the extent it seeks
5 information prior to the time Fox learned of the series that became *Empire* on the
6 grounds that such requests are overbroad, beyond the scope of the allegations, and
7 not reasonably calculated to lead to the discovery of admissible evidence. Fox
8 further objects to each and every Request to the extent it seeks information after the
9 time that Empire Distribution sent its initial objection to Fox in February 2014 on
10 the ground that such requests are overbroad, beyond the scope of the allegations,
11 seek information protected by the attorney-client privilege and work product
12 doctrines and not reasonably calculated to lead to the discovery of admissible
13 evidence. Fox will not produce documents outside of this relevant time period.

14 7. Fox objects to each and every Request to the extent it seeks
15 information that is a matter of public record, already in the possession of the
16 defendant, or otherwise available to the public and the defendant.

17 8. Fox objects to each and every Request to the extent it seeks the
18 disclosure of information that is more easily obtainable by deposition.

19 9. Fox objects to each and every Request to the extent it seeks cumulative
20 or duplicative information.

21 10. Fox objects to each and every Request to the extent it seeks the
22 production of documents other than in Fox's possession, custody, or control.

23 11. Fox objects to each and every Request to the extent it seeks the
24 disclosure of information and/or production of documents protected by the
25 attorney-client privilege, the attorney-work product doctrine, the common interest
26 or joint defense privileges, rules and agreements governing privacy or
27 confidentiality, or any other applicable privilege or protection recognized under
28 statute or applicable case law. Inadvertent production by Fox of any information

1 protected by any applicable privilege or protection shall not constitute a waiver of
2 the privilege or protection.

3 12. Fox objects to each and every Request to the extent it seeks Fox's
4 sensitive, confidential, or proprietary business information. To the extent such
5 documents are responsive, relevant, and not privileged, Fox will provide such
6 documents after the Court enters an appropriate protective order in this case.

7 13. Fox objects to each and every Request to the extent it seeks
8 information or the production of documents whose disclosure would otherwise be
9 prohibited by applicable law, rule, regulation, or contract obligation.

10 14. Nothing contained in any response herein shall be deemed an
11 admission, concession, or waiver by Fox as to the validity of any claim or defense
12 asserted by Fox.

13 15. All objections as to the relevance, authenticity, or admissibility of any
14 documents produced are expressly reserved by Fox.

15 16. To the extent that Fox responds to any of the Requests, it reserves the
16 right to object on any grounds, at any time, to other discovery requests involving or
17 relating to the subject matter of the Requests that Fox has responded to herein.

18 17. An objection or an undertaking to produce documents pursuant to a
19 particular Request should not be construed to indicate that responsive documents
20 actually exist.

21 18. Fox reserves all objections to the use of these responses. All such
22 objections may be interposed by Fox at the time of trial or as otherwise required by
23 the rules or order of the Court.

24 19. Fox objects to each and every Request to the extent it seeks the
25 production of "all" documents in Fox's possession. To the extent that Fox
26 undertakes to produce documents, Fox will conduct a reasonable search of
27 custodians reasonably likely to have non-cumulative, responsive documents as
28 qualified by Fox's objections and responses and, in the case of electronic

1 documents, Fox will use search terms reasonably expected to yield responsive
2 documents. Fox further objects to the production of "all" documents when a subset
3 of the documents would be sufficient to show the pertinent information.

4 20. Fox objects to each and every Request to the extent it seeks the
5 production of documents restored from backup tapes or archived data sources that
6 are not reasonably accessible. Fox will not search backup tapes or archived data
7 sources.

8 21. Fox objects to Instruction A as unduly burdensome. Fox will meet and
9 confer with defendant about the timing for the production of documents, including
10 whether productions should be done on a rolling basis.

11 22. Fox objects to Instruction B as overly broad and unduly burdensome to
12 the extent that it purports to impose obligations beyond those required by the
13 Federal Rules of Civil Procedure or Local Rules. Fox will meet and confer about a
14 reciprocal protocol for the production of documents.

15 23. Fox objects to Instruction E as premature. Fox will meet and confer
16 with defendant about a protocol for privilege logs.

17 24. Fox objects to the definition of "Fox" as overly broad and unduly
18 burdensome to the extent that such definition purports to extend to Twentieth
19 Century Fox Film Corporation as a whole. Fox will not produce documents from
20 any division of Twentieth Century Fox Film Corporation other than Twentieth
21 Century Fox Television. Fox further objects to the definition of "Fox" as overly
22 broad and unduly burdensome to the extent it purports to include "principals,
23 agents, representatives, attorneys, accountants, parents, subsidiaries, affiliates, and
24 any other person or entity acting on" the behalf of Twentieth Century Fox
25 Television or Fox Broadcasting Company.

26 25. Fox objects to the definition of "*Empire Series Music*" as overly broad,
27 unduly burdensome, and not reasonably calculated to lead to the discovery of
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1 admissible evidence to the extent that it includes music other than the Soundtrack
2 Music, as defined in the complaint.

3 26. Fox objects to the definition of "Documents" as overly broad and
4 unduly burdensome to the extent such definition purports to have Fox search for
5 documents or information neither relevant to the subject matter of this action nor
6 reasonably calculated to lead to the discovery of admissible evidence. Fox further
7 objects to the definition to the extent that it purports to require Fox to produce
8 identical copies of documents.

9 27. Fox objects to each and every Request to the extent it is premature in
10 asking or requiring Fox to provide information that is the subject of expert
11 disclosures under Federal Rule of Civil Procedure 26(a)(2) according to the
12 Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23).

13 28. Fox reserves the right to redact or exclude information from
14 documents to protect unnecessary disclosure of nonresponsive or irrelevant
15 sensitive, confidential, or proprietary business information.

16 29. As used in each objection and response made herein, "and" or "or"
17 shall be construed both conjunctively and disjunctively.

18 30. Fox reserves the right to supplement and/or amend these responses.

19 31. The fact that Fox may reassert particular objections in responding to a
20 Request should not be construed in any way as limiting the generality of the
21 foregoing objections. The General Objections set forth above are asserted with
22 respect to each and every Request set forth below.

23 **SPECIFIC OBJECTIONS AND RESPONSES**

24 In addition to the foregoing General Objections that are incorporated in each
25 and every response set forth below, Fox makes the following specific responses and
26 objections to the Requests:

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1 **REQUEST FOR PRODUCTION NO. 1:**

2 All DOCUMENTS reflecting, referring or relating to FOX's creation and
3 development of the *EMPIRE SERIES*, from the time the series was first conceived
4 through the date of the first pilot episode on January 7, 2015, including, without
5 limitation, any notes, drafts, memos, treatments, scripts, scriptments, synopsis,
6 outlines, pitches or COMMUNICATIONS relating to the concepts, themes, plots,
7 premises, topics and/or characters of the series.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

9 In addition to the foregoing General Objections, each of which is
10 incorporated herein by reference, Fox objects to this Request because it (a) is overly
11 broad and unduly burdensome in seeking all documents reflecting, referring, or
12 relating to Fox's creation and development of the *Empire* series, from the time the
13 series was first conceived through the date of the first pilot episode on January 7,
14 2015, without regard to whether such documents are relevant to the issues in this
15 action; (b) is vague and ambiguous as to "the time the series was first conceived;"
16 (c) seeks the production of documents immune from discovery under the attorney-
17 client privilege or work product doctrine; and (d) seeks documents outside Fox's
18 possession, custody, and control. Subject to, and without waiving, the General
19 Objections and these specific objections, Fox will produce, based on a reasonable
20 inquiry, responsive, non-privileged documents that reflect, refer, or relate to the use
21 of the mark "Empire" in connection with Fox's creation and development of the
22 *Empire* series from the time Fox learned of the series that became *Empire* through
23 January 7, 2015, if any such documents are within Fox's possession, custody, or
24 control.

25 **REQUEST FOR PRODUCTION NO. 2:**

26 All COMMUNICATIONS between FOX and creators Lee Daniels or Danny
27 Strong, or their agents/representatives, regarding the conception, creation or
28

1 development of the *EMPIRE SERIES*, from the time the series was first conceived
2 through the date of the first pilot episode on January 7, 2015.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

4 In addition to the foregoing General Objections, each of which is
5 incorporated herein by reference, Fox objects to this Request because it (a) is overly
6 broad and unduly burdensome in seeking all communications between Fox and
7 creators Lee Daniels or Danny Strong, or their agents/representatives, regarding the
8 conception, creation, or development of the *Empire* series, from the time the series
9 was first conceived through the date of the first pilot episode on January 7, 2015,
10 without regard to whether such documents are relevant to the issues in this action;
11 (b) is vague and ambiguous as to “the time the series was first conceived”; (c) seeks
12 the production of information outside of Fox’s possession, custody, or control;
13 (d) seeks information that violates the right of privacy of the talent with whom Fox
14 works; and (e) is cumulative and duplicative of Request No. 1. Subject to, and
15 without waiving, the General Objections and these specific objections, Fox will
16 produce, based on a reasonable inquiry, responsive, non-privileged communications
17 between Fox and creators Lee Daniels or Danny Strong, or their known
18 agents/representatives, regarding the use of the mark “Empire” in connection with
19 the conception, creation, or development of the *Empire* series, from the time Fox
20 learned of the series that became *Empire* through January 7, 2015, if any such
21 documents are within Fox’s possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 All DOCUMENTS reflecting, referring or relating to FOX’s decision to use
24 the “Empire” name for the *EMPIRE SERIES* including, without limitation, when,
25 where, why, and by whom the name was chosen, any artistic relevance of the name
26 to the show, any alternate names for the series that were considered, proposed or
27 discussed, and all meetings or COMMUNICATIONS regarding the use of the
28 name “Empire,” or any alternate names, for the series.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) seeks
4 the production of documents immune from discovery under the attorney-client
5 privilege or work product doctrine; (b) seeks information outside Fox's custody,
6 possession, and control; and (c) is cumulative and duplicative of Request Nos. 1
7 and 2. Subject to, and without waiving, the General Objections and these specific
8 objections, Fox will produce, based on a reasonable inquiry, responsive, non-
9 privileged documents reflecting, referring, or relating to Fox's decision to use the
10 "Empire" name for the *Empire* series. With respect to alternate names for the series
11 that were considered, proposed, or discussed, however, subject to, and without
12 waiving the General Objections and these specific objections, Fox will only
13 produce documents sufficient to show any alternative names, if any such non-
14 privileged documents are within Fox's possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 4:**

16 All DOCUMENTS reflecting, referring or relating to FOX's research,
17 investigation or due diligence, prior to the date of the first pilot episode of the
18 EMPIRE SERIES on January 7, 2015, regarding any use or trademarks of the name
19 "Empire" by any other company.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

21 In addition to the foregoing General Objections, each of which is
22 incorporated herein by reference, Fox objects to this Request because it (a) is vague
23 and ambiguous as to what constitutes "use"; (b) seeks the production of documents
24 immune from discovery under the attorney-client privilege or work product
25 doctrine; and (c) is cumulative and duplicative of Request No. 1. Subject to, and
26 without waiving, the General Objections and these specific objections, Fox will
27 produce, based on a reasonable inquiry, responsive, non-privileged documents
28 reflecting, referring, or relating to Fox's research, investigation, or due diligence

1 regarding any trademarks of the name "Empire" by any other company, prior to
2 January 7, 2015, if any such documents are within Fox's possession, custody, or
3 control.

4 **REQUEST FOR PRODUCTION NO. 5:**

5 All DOCUMENTS reflecting, referring or relating to any research,
6 investigation or due diligence by FOX regarding EMPIRE DISTRIBUTION,
7 including, but not limited to, its use or trademark of the "Empire" name.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

9 In addition to the foregoing General Objections, each of which is
10 incorporated herein by reference, Fox objects to this Request because it (a) is overly
11 broad and unduly burdensome in seeking all documents reflecting, referring, or
12 relating to any research, investigation, or due diligence by Fox regarding Empire
13 Distribution, without regard to whether such documents are relevant to the issues in
14 this action; (b) is vague and ambiguous as to what constitutes "use"; (c) seeks the
15 production of documents immune from discovery under the attorney-client
16 privilege or work product doctrine; and (d) is argumentative. Subject to, and
17 without waiving, the General Objections and these specific objections, Fox will
18 produce, based on a reasonable inquiry, responsive, non-privileged documents
19 reflecting, referring, or relating to any research, investigation, or due diligence by
20 Fox regarding Empire Distribution and *Empire*, if any such documents are within
21 Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 All DOCUMENTS reflecting, referring or relating to any attempts by FOX to
24 register the name "Empire", or any other name, mark, logo or symbol relating to the
25 EMPIRE SERIES, as a trademark, including any COMMUNICATIONS relating
26 thereto.

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1 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is overly
4 broad and unduly burdensome in seeking all documents reflecting, referring, or
5 relating to any attempts by Fox to register the name “Empire” or any other name,
6 mark, logo, or symbol relating to the *Empire* series, as a trademark, without regard
7 to whether such documents are relevant to the issues in this action; (b) seeks the
8 production of documents immune from discovery under the attorney-client
9 privilege or work product doctrine; and (c) seeks information otherwise available to
10 the public and the defendant. Subject to, and without waiving, the General
11 Objections and these specific objections, Fox will produce, based on a reasonable
12 inquiry, responsive, non-privileged documents submitted to the United States
13 Patent and Trademark Office regarding Fox’s application to register “Empire” as a
14 trademark and responses received thereto, if any such documents are within Fox’s
15 possession, custody, or control.

16 REQUEST FOR PRODUCTION NO. 7:

17 All DOCUMENTS reflecting, referring or relating to any consumer or
18 market research surveys conducted by FOX regarding the “Empire” name.

19 RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

20 In addition to the foregoing General Objections, each of which is
21 incorporated herein by reference, Fox objects to this Request because it (a) is overly
22 broad and unduly burdensome in seeking all documents reflecting, referring, or
23 relating to any consumer or market research surveys conducted by Fox regarding
24 the “Empire” name, without regard to whether such documents are relevant to the
25 issues in this action; (b) seeks the production of documents immune from discovery
26 under the attorney-client privilege or work product doctrine; and (c) seeks
27 proprietary or confidential business information, trade secrets, or other highly
28 sensitive information. Subject to, and without waiving, the General Objections and

1 these specific objections, Fox will produce, based on a reasonable inquiry,
2 responsive, non-privileged consumer or market research surveys conducted by Fox
3 regarding the "Empire" name, if any such documents are within Fox's possession,
4 custody, or control.

5 **REQUEST FOR PRODUCTION NO. 8:**

6 All DOCUMENTS reflecting, referring or relating to FOX's alleged
7 "intellectual property rights in and to the fictional television series *Empire* and the
8 music therefrom, including copyright and trademark rights," as alleged in paragraph
9 3 of the COMPLAINT.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

11 In addition to the foregoing General Objections, each of which is
12 incorporated herein by reference, Fox objects to this Request because it (a) is overly
13 broad and unduly burdensome in seeking all documents reflecting, referring, or
14 relating to Fox's alleged intellectual property rights in and to the fictional television
15 series *Empire* and the music therefrom, including copyright and trademark rights,
16 without regard to whether such documents are relevant to the issues in this action;
17 (b) seeks the production of documents immune from discovery under the attorney-
18 client privilege or work product doctrine; (c) seeks information otherwise available
19 to the public and the defendant; and (d) is argumentative. Fox will not produce
20 documents responsive to this Request.

21 **REQUEST FOR PRODUCTION NO. 9:**

22 All DOCUMENTS reflecting, referring or relating to FOX's design of the
23 "Empire" mark/logo for the *EMPIRE SERIES* including, without limitation, all
24 drafts, sketches, designs, outlines, depictions or illustrations of the "Empire"
25 mark/logo (including without limitation those depicted in paragraph 25 of the
26 COMPLAINT and paragraph 21 of the COUNTERCLAIMS), any drafts, sketches,
27 designs, outlines, depictions or illustrations of any alternate designs of the
28 "Empire" mark/logo, and all COMMUNICATIONS relating thereto.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is overly
4 broad and unduly burdensome in seeking all documents reflecting, referring, or
5 relating to Fox's design of the "Empire" mark/logo for the *Empire* series, without
6 regard to whether such documents are relevant to the issues in this action; and
7 (b) seeks the production of documents immune from discovery under the attorney-
8 client privilege or work product doctrine. Subject to, and without waiving, the
9 General Objections and these specific objections, Fox will produce, based on a
10 reasonable inquiry, responsive, non-privileged documents relating to Fox's design
11 of the "Empire" mark/logo for the *Empire* series, if any such documents are within
12 Fox's possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 10:**

14 All DOCUMENTS reflecting, referring or relating to FOX's use of a city
15 skyline graphic in conjunction with the "Empire" mark/logo (as depicted in
16 paragraph 22 of the COUNTERCLAIMS) including, without limitation, all
17 COMMUNICATIONS regarding such use of the city skyline graphic.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

19 In addition to the foregoing General Objections, each of which is
20 incorporated herein by reference, Fox objects to this Request because it (a) is
21 argumentative; (b) seeks the production of documents immune from discovery
22 under the attorney-client privilege or work product doctrine; and (c) is cumulative
23 and duplicative of Request No. 9. Subject to, and without waiving, the General
24 Objections and these specific objections, Fox will produce, based on a reasonable
25 inquiry, responsive, non-privileged documents relating to Fox's use of a city
26 skyline graphic in conjunction with the "Empire" mark/logo, if any such documents
27 are within Fox's possession, custody, or control.

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REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS reflecting, referring or relating to any advertisements, promotions or marketing efforts by FOX using the "Empire" mark/logo.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any advertisements, promotions, or marketing efforts by Fox using the "Empire" mark/logo, without regard to whether such documents are relevant to the issues in this action; and (b) is vague and ambiguous as to the meaning of "promotions or marketing efforts." Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged exemplars of advertisements, promotions, or marketing efforts by Fox using the "Empire" mark/logo, if any such exemplars are within Fox's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS reflecting, referring or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC* including, but not limited to, all contracts, agreements, or COMMUNICATIONS relating thereto.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *Empire* series music, without regard to whether such documents are relevant to the issues in this action; (b) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information; and (c) is vague and ambiguous as to the meaning of "promotion" and "marketing." Subject to, and without waiving, the General

1 Objections and these specific objections, Fox will produce, based on a reasonable
2 inquiry, responsive, non-privileged exemplars of promotions, advertisements, or
3 marketing of the *Empire* series music and executed contracts, if any such
4 documents are within Fox's possession, custody, or control.

5 **REQUEST FOR PRODUCTION NO. 13:**

6 All DOCUMENTS reflecting, referring or relating to the sale, license,
7 distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores,
8 online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere
9 else, including, but not limited to, all contracts, agreements, or
10 COMMUNICATIONS relating thereto.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

12 In addition to the foregoing General Objections, each of which is
13 incorporated herein by reference, Fox objects to this Request because it (a) is overly
14 broad and unduly burdensome in seeking all documents reflecting, referring, or
15 relating to the sale, license, distribution, or release of the *Empire* series music,
16 without regard to whether such documents are relevant to the issues in this action;
17 (b) seeks proprietary or confidential business information, trade secrets, or other
18 highly sensitive information; and (c) seeks the production of documents immune
19 from discovery under the attorney-client privilege or work product doctrine.
20 Subject to, and without waiving, the General Objections and these specific
21 objections, Fox will produce, based on a reasonable inquiry, responsive, non-
22 privileged executed agreements relating to the sale, license, distribution, or release
23 of the *Empire* series music, if any such documents are within Fox's possession,
24 custody, or control.

25 **REQUEST FOR PRODUCTION NO. 14:**

26 All COMMUNICATIONS between FOX and the main cast members of the
27 *EMPIRE SERIES* or their agents/representatives, including, but not limited to,
28 Terrance Howard, Taraji Henson, Trai Byers, Jussie Smollett, Bryshere Gray,

1 Kaitlin Doubleday, Grace Gealey and Malik Yoba, regarding the concept of the
2 series prior to the date of the first pilot episode on January 7, 2015.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

4 In addition to the foregoing General Objections, each of which is
5 incorporated herein by reference, Fox objects to this Request because it (a) is overly
6 broad and unduly burdensome in seeking all communications between Fox and the
7 main cast members of the *Empire* series, or their agents/representatives, regarding
8 the concept of the series prior to January 7, 2015 without regard to whether such
9 documents are relevant to the issues in this action; (b) is vague and ambiguous as to
10 who the “main cast members” of the *Empire* series are; (c) seeks proprietary or
11 confidential business information, trade secrets, or other highly sensitive
12 information; (d) seeks the production of information outside of Fox’s possession,
13 custody, or control; and (e) seeks information that violates the right of privacy of
14 the talent with whom Fox works. Subject to, and without waiving, the General
15 Objections and these specific objections, Fox will produce, based on a reasonable
16 inquiry, responsive, non-privileged communications between Fox and the main cast
17 members of the *Empire* series, or their known agents/representatives, relating to the
18 use of the mark “Empire” in connection with the *Empire* series, if any such
19 communications are within Fox’s possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 15:**

21 All agreements, contracts or COMMUNICATIONS between FOX and any
22 musicians who produce, perform or compose music for the *EMPIRE SERIES*,
23 regarding the production, promotion, advertisement, sale, license, distribution or
24 release of the *EMPIRE SERIES MUSIC*, including, but not limited to, Timbaland
25 (aka Timothy Moseley), Ne-Yo (aka Schaffer Chimere Smith), Jussie Smollett,
26 Bryshere Gray, Gladys Knight, Anthony Hamilton, Sway Calloway, Raven
27 Symone, Estelle, Mary J. Blige, Snoop Dogg, Rita Ora, Juicy J, Patti LaBelle and
28 Charles Hamilton, or any of their agents/representatives.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is overly
4 broad and unduly burdensome in seeking all agreements, contracts, or
5 communications between Fox and any musicians who produce, perform, or
6 compose music for the *Empire* series, regarding the production, promotion,
7 advertisement, sale, license, distribution, or release of the *Empire* series music,
8 without regard to whether such documents are relevant to the issues in this action;
9 (b) is vague and ambiguous as to “promotion”; (c) seeks the production of
10 documents immune from discovery under the attorney-client privilege or work
11 product doctrine; (d) seeks proprietary or confidential business information, trade
12 secrets, or other highly sensitive information; (e) seeks the production of
13 information outside of Fox’s possession, custody, or control; (f) seeks information
14 that violates the right of privacy of the talent with whom Fox works; and (g) is
15 cumulative and duplicative of Request Nos. 12 and 14. Fox will not produce
16 documents responsive to this Request.

17 REQUEST FOR PRODUCTION NO. 16:

18 All contracts, agreements, marketing plans and COMMUNICATIONS
19 between FOX and Columbia Records regarding the promotion, advertisement, sale,
20 license, distribution or release of *EMPIRE SERIES MUSIC*.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

22 In addition to the foregoing General Objections, each of which is
23 incorporated herein by reference, Fox objects to this Request because it (a) is overly
24 broad and unduly burdensome in seeking all contracts, agreements, marketing
25 plans, and communications between Fox and Columbia Records regarding the
26 promotion, advertisement, sale, license, distribution, or release of *Empire* series
27 music, without regard to whether such documents are relevant to the issues in this
28 action; (b) is vague and ambiguous as to “marketing plans” and “promotion”;

1 (c) seeks the production of documents immune from discovery under the attorney-
2 client privilege or work product doctrine; (d) seeks proprietary or confidential
3 business information, trade secrets, or other highly sensitive information; (e) seeks
4 the production of information outside of Fox's possession, custody, or control; and
5 (f) is cumulative and duplicative of Request No. 12. Subject to, and without
6 waiving, the General Objections and these specific objections, Fox will produce,
7 based on a reasonable inquiry, responsive, non-privileged executed contracts or
8 agreements, marketing plans, and communications between Fox and Columbia
9 Records regarding the use of the "Empire" mark in connection with the promotion,
10 advertisement, sale, license, distribution, or release of *Empire* series music, if any
11 such documents are within Fox's possession, custody, or control.

12 **REQUEST FOR PRODUCTION NO. 17:**

13 All internal FOX COMMUNICATIONS regarding the production, sale,
14 license, promotion, advertisement, marketing, distribution or release of the
15 *EMPIRE SERIES MUSIC*.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

17 In addition to the foregoing General Objections, each of which is
18 incorporated herein by reference, Fox objects to this Request because it (a) is overly
19 broad and unduly burdensome in seeking all internal Fox communications
20 regarding the production, sale, license, promotion, advertisement, marketing,
21 distribution, or release of the *Empire* series music, without regard to whether such
22 communications are relevant to the issues in this action; (b) is vague and
23 ambiguous as to "promotion" and "marketing"; (c) seeks the production of
24 communications immune from discovery under the attorney-client privilege or
25 work product doctrine; (d) seeks proprietary or confidential business information,
26 trade secrets, or other highly sensitive information; and (e) is cumulative and
27 duplicative of Request Nos. 12 and 13. Subject to, and without waiving, the
28 General Objections and these specific objections, Fox will produce, based on a

1 reasonable inquiry, responsive, non-privileged internal Fox communications
2 regarding the use of the "Empire" mark/logo in connection with the production,
3 sale, license, promotion, advertisement, marketing, distribution or release of the
4 *Empire* series music, if any such communications are within Fox's possession,
5 custody, or control.

6 **REQUEST FOR PRODUCTION NO. 18:**

7 All DOCUMENTS reflecting, referring or relating to FOX's online account
8 with Mediabase.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

10 In addition to the foregoing General Objections, each of which is
11 incorporated herein by reference, Fox objects to this Request because it (a) is overly
12 broad and unduly burdensome in seeking all documents reflecting, referring, or
13 relating to Fox's online account with Mediabase, without regard to whether such
14 documents are relevant to the issues in this action; (b) is vague and ambiguous as to
15 "Mediabase"; (c) seeks proprietary or confidential business information, trade
16 secrets, or other highly sensitive information; (d) seeks the production of
17 information outside of Fox's possession, custody, or control; and (e) is
18 argumentative. Fox will not produce documents responsive to this Request.

19 **REQUEST FOR PRODUCTION NO. 19:**

20 All DOCUMENTS reflecting, referring or relating to the performance,
21 presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations,
22 concerts, live performances, events, physical record stores and other venues.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

24 In addition to the foregoing General Objections, each of which is
25 incorporated herein by reference, Fox objects to this Request because it (a) is overly
26 broad and unduly burdensome in seeking all documents reflecting, referring, or
27 relating to the performance, presentation, or promotion of the *Empire* series music
28 at radio stations, concerts, live performances, events, physical record stores, and

1 other venues, without regard to whether such documents are relevant to the issues
2 in this action; (b) is vague and ambiguous as to “promotion” and “presentation”; (c)
3 seeks the production of documents immune from discovery under the attorney-
4 client privilege or work product doctrine; and (d) is cumulative and duplicative of
5 Request No. 12. Subject to, and without waiving, the General Objections and these
6 specific objections, Fox will produce, based on a reasonable inquiry, responsive,
7 non-privileged documents sufficient to show any performances, presentations, or
8 promotions of the *Empire* series music at radio stations, concerts, live
9 performances, events, physical record stores, and other venues, if any such
10 documents are within Fox’s possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 20:**

12 Digital and hard copies of the *EMPIRE SERIES* including each season and
13 episode to date.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

15 In addition to the foregoing General Objections, each of which is
16 incorporated herein by reference, Fox objects to this Request because digital and
17 hard copies of the *Empire* series are available to the public and the defendant. Fox
18 will not produce digital or hard copies of the *Empire* series in response to this
19 Request.

20 **REQUEST FOR PRODUCTION NO. 21:**

21 Digital and hard copies of all *EMPIRE SERIES MUSIC*.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

23 In addition to the foregoing General Objections, each of which is
24 incorporated herein by reference, Fox objects to this Request because digital and
25 hard copies of all *Empire* series music are available to the public and the defendant.
26 Fox will not produce digital or hard copies of *Empire* series music in response to
27 this Request.

28

1 **REQUEST FOR PRODUCTION NO. 22:**

2 All DOCUMENTS reflecting, referring or relating to any search or
3 investigation of any record, including but not limited to the records of the United
4 States Patent and Trademark Office, state trademark records, and business
5 directories conducted by FOX that relate to the “Empire” mark or any similar name
6 or mark used by FOX or anyone else, including any trademark search report for any
7 mark or designation that consists of or includes the word “Empire” or any variant of
8 that word.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

10 In addition to the foregoing General Objections, each of which is
11 incorporated herein by reference, Fox objects to this Request because it (a) is overly
12 broad and unduly burdensome in seeking all documents reflecting, referring, or
13 relating to any search or investigation of any record by Fox that relates to the
14 “Empire” mark or any similar name or mark used by Fox or anyone else, without
15 regard to whether such documents are relevant to the issues in this action; (b) is
16 vague and ambiguous as to the meaning of “used,” “record,” and “similar”; (c)
17 seeks the production of documents immune from discovery under the attorney-
18 client privilege and work product doctrine; and (d) is cumulative and duplicative of
19 Request No. 4. Subject to, and without waiving, the General Objections and these
20 specific objections, Fox will produce, based on a reasonable inquiry, responsive,
21 non-privileged documents relating to any search or investigation of any record by
22 Fox that relates to the “Empire” mark, if any such documents are within Fox’s
23 possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 23:**

25 All DOCUMENTS reflecting, referring or relating to any legal opinion that
26 FOX is relying on in this proceeding concerning its right to use the “Empire” mark
27 or any similar mark or name.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is overly
4 broad and unduly burdensome in seeking all documents reflecting, referring, or
5 relating to any legal opinions that Fox is relying on in this proceeding concerning
6 its right to use the “Empire” mark or any similar mark or name, without regard to
7 whether such documents are relevant to the issues in this action; (b) is vague and
8 ambiguous as to “legal opinion,” “use,” and “similar”; and (c) seeks the production
9 of documents immune from discovery under the attorney-client privilege and work
10 product doctrine. Subject to, and without waiving, the General Objections and
11 these specific objections, Fox will produce, based on a reasonable inquiry, any
12 responsive legal opinions that Fox intends to rely on in this proceeding concerning
13 its right to use the “Empire” mark, if any such documents are within Fox’s
14 possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 24:**

16 All DOCUMENTS reflecting, referring or relating to any agreements, written
17 or oral, between FOX and anyone else concerning the use of the “Empire” mark.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

19 In addition to the foregoing General Objections, each of which is
20 incorporated herein by reference, Fox objects to this Request because it (a) is overly
21 broad and unduly burdensome in seeking all documents reflecting, referring, or
22 relating to any agreements, written or oral, between Fox and anyone else
23 concerning the use of the “Empire” mark, without regard to whether such
24 documents are relevant to the issues in this action; (b) is vague and ambiguous as to
25 “use”; (c) seeks the production of documents immune from discovery under the
26 attorney-client privilege and work product doctrine; and (d) seeks proprietary or
27 confidential business information, trade secrets, or other highly sensitive
28 information. Subject to, and without waiving, the General Objections and these

1 specific objections, Fox will produce, based on a reasonable inquiry, responsive,
2 non-privileged executed agreements between Fox and anyone else concerning the
3 use of the "Empire" mark, if any such documents are within Fox's possession,
4 custody, or control.

5 **REQUEST FOR PRODUCTION NO. 25:**

6 All DOCUMENTS reflecting, referring or relating to any of FOX's present
7 or prospective sales, marketing or business plans/strategies regarding products or
8 services provided in connection with the "Empire" mark, including the *EMPIRE*
9 *SERIES* and *EMPIRE SERIES MUSIC*.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

11 In addition to the foregoing General Objections, each of which is
12 incorporated herein by reference, Fox objects to this Request because it (a) is overly
13 broad and unduly burdensome in seeking all documents reflecting, referring, or
14 relating to any of Fox's present or prospective sales, marketing, or business
15 plans/strategies regarding products or services provided in connection with the
16 "Empire" mark, without regard to whether such documents are relevant to the
17 issues in this action; (b) seeks the production of documents immune from discovery
18 under the attorney-client privilege and work product doctrine; and (c) seeks
19 proprietary or confidential business information, trade secrets, or other highly
20 sensitive information. Subject to, and without waiving, the General Objections and
21 these specific objections, Fox will produce, based on a reasonable inquiry,
22 responsive, non-privileged documents sufficient to show sales of products or
23 services provided bearing the "Empire" mark, if any such documents are within
24 Fox's possession, custody, or control.

25 **REQUEST FOR PRODUCTION NO. 26:**

26 All DOCUMENTS sufficient to identify every existing or intended good or
27 service offered or sold by FOX in connection with the "Empire" mark, and the date
28

1 on which each such good or service was first offered or sold, or will be offered or
2 sold.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

4 In addition to the foregoing General Objections, each of which is
5 incorporated herein by reference, Fox objects to this Request because it (a) seeks
6 proprietary or confidential business information, trade secrets, or other highly
7 sensitive information; and (b) seeks information otherwise available to the public
8 and the defendant. Subject to, and without waiving, the General Objections and
9 these specific objections, Fox will produce, based on a reasonable inquiry,
10 responsive, non-privileged documents sufficient to identify every existing or
11 intended good or service offered or sold by Fox in connection with the "Empire"
12 mark, and the date on which each such good or service was first offered or sold or
13 will be offered or sold, if any such documents are within Fox's possession, custody,
14 or control.

15 **REQUEST FOR PRODUCTION NO. 27:**

16 All DOCUMENTS sufficient to show the channels of trade or distribution
17 (e.g., retail, wholesale, Internet, catalog, etc.) through which FOX has sold or
18 offered for sale, currently sell or offer for sale, or plan to sell or offer for sale any
19 goods or services identified by the "Empire" mark.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

21 In addition to the foregoing General Objections, each of which is
22 incorporated herein by reference, Fox objects to this Request because it (a) seeks
23 proprietary or confidential business information, trade secrets, or other highly
24 sensitive information; and (b) seeks information otherwise available to the public
25 and the defendant. Subject to, and without waiving, the General Objections and
26 these specific objections, Fox will produce, based on a reasonable inquiry,
27 responsive, non-privileged documents sufficient to show the channels of trade or
28 distribution through which Fox has sold or offered for sale or currently sells or

1 offers for sale or plans to sell or offer for sale any goods or services identified by
2 the "Empire" mark, if any such documents are within Fox's possession, custody, or
3 control.

4 **REQUEST FOR PRODUCTION NO. 28:**

5 All DOCUMENTS sufficient to show all geographical areas (by city and
6 state; and, if outside the United States, by country) in which FOX has sold, or
7 offered for sale, goods or services under or in connection with the "Empire" mark.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

9 In addition to the foregoing General Objections, each of which is
10 incorporated herein by reference, Fox objects to this Request because it seeks
11 information otherwise available to the public and the defendant. Subject to, and
12 without waiving, the General Objections and these specific objections, Fox will
13 produce, based on a reasonable inquiry, responsive, non-privileged documents
14 sufficient to show all geographical areas (by state; and, if outside the United States,
15 by country) in which Fox has sold, or offered for sale, goods or services under or in
16 connection with the "Empire" mark, if any such documents are within Fox's
17 possession, custody, or control.

18 **REQUEST FOR PRODUCTION NO. 29:**

19 All DOCUMENTS reflecting, referring or relating to any study regarding
20 actual or likely purchasers of goods or services offered for sale, sold, promoted, or
21 advertised under or in association with the "Empire" mark.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

23 In addition to the foregoing General Objections, each of which is
24 incorporated herein by reference, Fox objects to this Request because it (a) is overly
25 broad and unduly burdensome in seeking all documents reflecting, referring, or
26 relating to any study regarding actual or likely purchasers of goods or services
27 offered for sale, sold, promoted, or advertised under or in association with the
28 "Empire" mark, without regard to whether such documents are relevant to the

1 issues in this action; (b) is vague and ambiguous as to “promoted” and “in
2 association with”; (c) seeks the production of documents immune from discovery
3 under the attorney-client privilege and work product doctrine; and (d) seeks
4 proprietary or confidential business information, trade secrets, or other highly
5 sensitive information. Subject to, and without waiving, the General Objections and
6 these specific objections, Fox will produce, based on a reasonable inquiry,
7 responsive, non-privileged studies regarding actual or likely purchasers of goods or
8 services offered for sale, sold, promoted, or advertised with the “Empire” mark, if
9 any such documents are within Fox’s possession, custody, or control.

10 **REQUEST FOR PRODUCTION NO. 30:**

11 All DOCUMENTS sufficient to show each purchase of any good or service
12 offered for sale, sold, promoted, or advertised under or in association with the
13 “Empire” mark.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

15 In addition to the foregoing General Objections, each of which is
16 incorporated herein by reference, Fox objects to this Request because it (a) is overly
17 broad and unduly burdensome in seeking all documents sufficient to show each
18 purchase of any good or service offered for sale, sold, promoted, or advertised
19 under or in association with the “Empire” mark, without regard to whether such
20 documents are relevant to the issues in this action; (b) is vague and ambiguous as to
21 “promoted” and “in association with”; (c) seeks the production of documents
22 immune from discovery under the attorney-client privilege and work product
23 doctrine; and (d) seeks proprietary or confidential business information, trade
24 secrets, or other highly sensitive information. Fox will not produce documents in
25 response to this Request.

26 **REQUEST FOR PRODUCTION NO. 31:**

27 All DOCUMENTS reflecting, referring or relating to FOX’s revenues,
28 expenses, and profits relating to all goods and services sold, or offered for sale,

1 under or in association with the "Empire" mark, including the *EMPIRE SERIES* and
2 *EMPIRE SERIES MUSIC*.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

4 In addition to the foregoing General Objections, each of which is
5 incorporated herein by reference, Fox objects to this Request because it (a) is vague
6 and ambiguous as to "in association with"; and (b) seeks proprietary or confidential
7 business information, trade secrets, or other highly sensitive information. Subject
8 to, and without waiving, the General Objections and these specific objections, Fox
9 will produce, based on a reasonable inquiry, responsive, non-privileged documents
10 sufficient to show Fox's revenues, expenses, and profits relating to goods and
11 services sold, or offered for sale, with the "Empire" mark, if any such documents
12 are within Fox's possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 32:**

14 All DOCUMENTS reflecting, referring or relating to the total volume of
15 sales for all goods and services sold under or in association with the "Empire"
16 mark, including the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

18 In addition to the foregoing General Objections, each of which is
19 incorporated herein by reference, Fox objects to this Request because it (a) is overly
20 broad and unduly burdensome in seeking all documents reflecting, referring, or
21 relating to the total volume of sales for all goods and services sold under or in
22 association with the "Empire" mark; (b) is vague and ambiguous as to "in
23 association with"; and (c) seeks proprietary or confidential business information,
24 trade secrets, or other highly sensitive information. Subject to, and without
25 waiving, the General Objections and these specific objections, Fox will produce,
26 based on a reasonable inquiry, responsive, non-privileged documents sufficient to
27 show the total volume of sales for all goods and services sold with the "Empire"
28 mark, if any such documents are within Fox's possession, custody, or control.

1 **REQUEST FOR PRODUCTION NO. 33:**

2 All DOCUMENTS reflecting, referring or relating to the amounts spent by
3 FOX in each year to advertise, market and promote goods or services under or in
4 association with the "Empire" mark or variations thereof, including the *EMPIRE*
5 *SERIES* and *EMPIRE SERIES MUSIC*.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

7 In addition to the foregoing General Objections, each of which is
8 incorporated herein by reference, Fox objects to this Request because it (a) is overly
9 broad and unduly burdensome in seeking all documents reflecting, referring, or
10 relating to the amounts spent by Fox in each year to advertise, market, and promote
11 goods or services under or in association with the "Empire" mark or variations
12 thereof; (b) is vague and ambiguous as to "market and promote," "in association
13 with," "variations thereof"; (c) seeks the production of documents immune from
14 discovery under the attorney-client privilege and work product doctrine; and (d)
15 seeks proprietary or confidential business information, trade secrets, or other highly
16 sensitive information. Subject to, and without waiving, the General Objections and
17 these specific objections, Fox will produce, based on a reasonable inquiry,
18 responsive, non-privileged documents sufficient to show the amount spent by Fox
19 each year to advertise, market, and promote goods and services with the "Empire"
20 mark, if any such documents are within Fox's possession, custody, or control.

21 **REQUEST FOR PRODUCTION NO. 34:**

22 All DOCUMENTS reflecting, referring or relating to any publicity or news
23 relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*, including but not
24 limited to press releases, articles, interviews, and public relations pieces appearing
25 in the media, press, blogs, websites, internet, journals, newspapers, magazines or
26 trade publications.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is overly
4 broad and unduly burdensome in seeking all documents reflecting, referring, or
5 relating to any publicity or news relating to the *Empire* series and *Empire* series
6 music, without regard to whether such documents are relevant to the issues in this
7 action; (b) seeks the production of documents immune from discovery under the
8 attorney-client privilege and work product doctrine; and (c) seeks information
9 otherwise available to the public and the defendant. Subject to, and without
10 waiving, the General Objections and these specific objections, Fox will produce,
11 based on a reasonable inquiry, responsive, non-privileged documents not otherwise
12 available to the public and the defendant relating to any publicity or news relating
13 to the use of the “Empire” mark in connection with the Empire series and Empire
14 series music, if any such documents are within Fox’s possession, custody, or
15 control.

16 **REQUEST FOR PRODUCTION NO. 35:**

17 All DOCUMENTS reflecting, referring or relating to anyone other than FOX
18 that has used or is using the designation or word “Empire” in the music industry.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

20 In addition to the foregoing General Objections, each of which is
21 incorporated herein by reference, Fox objects to this Request because it (a) is overly
22 broad and unduly burdensome in seeking all documents reflecting, referring, or
23 relating to anyone other than Fox that has used or is using the designation or word
24 “Empire” in the music industry, without regard to whether such documents are
25 relevant to the issues in this action; (b) is vague and ambiguous as to “has used or is
26 using” and “designation”; (c) seeks the production of documents immune from
27 discovery under the attorney-client privilege and work product doctrine; (d) seeks
28 information otherwise available to the public and the defendant; and (e) is

1 cumulative and duplicative of Request Nos. 4 and 5. Subject to, and without
2 waiving, the General Objections and these specific objections, Fox will produce,
3 based on a reasonable inquiry, responsive, non-privileged documents relating to
4 anyone other than Fox that has used or is using the designation or word "Empire" in
5 the music industry, if any such documents are within Fox's possession, custody, or
6 control.

7 **REQUEST FOR PRODUCTION NO. 36:**

8 All DOCUMENTS sufficient to identify by name and address each entity or
9 individual authorized to sell, distribute, promote, advertise or market any goods or
10 services identified by FOX's "Empire" mark, including in connection with the
11 *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

13 In addition to the foregoing General Objections, each of which is
14 incorporated herein by reference, Fox objects to this Request because it seeks the
15 production of documents immune from discovery under the attorney-client
16 privilege and work product doctrine. Subject to, and without waiving, the General
17 Objections and these specific objections, Fox will produce, based on a reasonable
18 inquiry, responsive, non-privileged documents sufficient to identify by name and
19 address each entity or individual authorized to sell, distribute, promote, advertise, or
20 market any goods or services identified by Fox's "Empire" mark, if any such
21 documents are within Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 37:**

23 All DOCUMENTS reflecting, referring or relating to any cease-and-desist
24 letter, demand, dispute, complaint, objection, protest, lawsuit, threatened lawsuit, or
25 expression of concern by FOX to a third party, or by any third party to FOX,
26 relating to FOX's or the third party's existing or intended use of the "Empire"
27 mark.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) is vague
4 and ambiguous as to “use”; and (b) seeks the production of documents immune
5 from discovery under the attorney-client privilege and work product doctrine.
6 Subject to, and without waiving, the General Objections and these specific
7 objections, Fox will produce, based on a reasonable inquiry, responsive, non-
8 privileged communications sent to a third-party regarding any objection or concern
9 by Fox regarding that third-party’s existing or intended use of the “Empire” mark,
10 if any such documents are within Fox’s possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 38:**

12 All DOCUMENTS reflecting, referring or relating to the date FOX first
13 became aware of EMPIRE DISTRIBUTION and/or its use of the “Empire” name
14 and any subsequent COMMUNICATIONS regarding EMPIRE DISTRIBUTION’S
15 use of that mark.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

17 In addition to the foregoing General Objections, each of which is
18 incorporated herein by reference, Fox objects to this Request because it (a) is vague
19 and ambiguous as to “use”; (b) seeks the production of documents immune from
20 discovery under the attorney-client privilege and work product doctrine; and (c) is
21 argumentative. Subject to, and without waiving, the General Objections and these
22 specific objections, Fox will produce, based on a reasonable inquiry, responsive,
23 non-privileged documents relating to the date Fox first became aware of Empire
24 Distribution and/or its use of the “Empire” name and any subsequent
25 communications regarding Empire Distribution’s use of the name, if any such
26 documents are within Fox’s possession, custody, or control.

27

28

1 **REQUEST FOR PRODUCTION NO. 39:**

2 All DOCUMENTS reflecting, referring or relating any actual or potential,
3 direct or indirect, competition between the products or services that FOX offers,
4 offered, or intends to offer under its "Empire" mark and the products or services
5 that EMPIRE DISTRIBUTION offers or offered under its "Empire" marks.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

7 In addition to the foregoing General Objections, each of which is
8 incorporated herein by reference, Fox objects to this Request because it (a) seeks
9 the production of documents immune from discovery under the attorney-client
10 privilege and work product doctrine; (b) seeks proprietary or confidential business
11 information, trade secrets, or other highly sensitive information; and (c) is
12 argumentative. Subject to, and without waiving, the General Objections and these
13 specific objections, Fox will produce, based on a reasonable inquiry, responsive,
14 non-privileged documents reflecting any actual or potential, direct or indirect,
15 competition between the products or services that Fox offers, offered or intends to
16 offer under its "Empire" mark and the products or services that Empire Distribution
17 offers or offered with the "Empire" name, if any such documents are within Fox's
18 possession, custody, or control.

19 **REQUEST FOR PRODUCTION NO. 40:**

20 All DOCUMENTS reflecting, referring or relating to any instance in which
21 any person or entity made any statement, comment, inquiry or question regarding
22 any actual or potential association, affiliation, connection, correlation, relation or
23 sponsorship between the *EMPIRE SERIES* and/or *EMPIRE SERIES MUSIC*, on the
24 one hand, and EMPIRE DISTRIBUTION, on the other hand.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

26 Subject to, and without waiving, the General Objections, Fox will produce,
27 based on a reasonable inquiry, responsive, non-privileged documents relating to any
28 instance in which any person or entity made any statement, comment, inquiry, or

1 question regarding any actual or potential association, affiliation, connection,
2 correlation, relation, or sponsorship between the *Empire* series and/or *Empire* series
3 music, on the one hand, and Empire Distribution, on the other hand, if any such
4 documents are within Fox's possession, custody, or control.

5 **REQUEST FOR PRODUCTION NO. 41:**

6 All COMMUNICATIONS by or from FOX, FOX's customers or other
7 persons, expressing any actual or potential confusion, association, affiliation,
8 connection, correlation, relation or sponsorship between FOX and EMPIRE
9 DISTRIBUTION and their respective goods or services.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

11 In addition to the foregoing General Objections, each of which is
12 incorporated herein by reference, Fox objects to this Request because it (a) seeks
13 the production of information outside of Fox's possession, custody, or control; (b)
14 seeks information that violates the right of privacy of Fox's customers; and (c) is
15 cumulative and duplicative of Request No. 40. Subject to, and without waiving, the
16 General Objections and these specific objections, Fox will produce, based on a
17 reasonable inquiry, responsive, non-privileged communications by or from Fox,
18 Fox's customers or other persons, expressing any actual or potential confusion,
19 association, affiliation, connection, correlation, relation, or sponsorship between
20 Fox and Empire Distribution and their respective goods or services, if any such
21 documents are within Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 42:**

23 All COMMUNICATIONS by or from FOX, FOX's customers or other
24 persons, expressing any lack of confusion, association, affiliation, connection,
25 correlation, relation or sponsorship between FOX and EMPIRE DISTRIBUTION
26 and their respective goods or services.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) seeks
4 the production of documents immune from discovery under the attorney-client
5 privilege and work product doctrine; (b) seeks the production of information
6 outside of Fox's possession, custody, or control; and (c) seeks information that
7 violates the right of privacy of Fox's customers. Subject to, and without waiving,
8 the General Objections and these specific objections, Fox will produce, based on a
9 reasonable inquiry, responsive, non-privileged communications by or from Fox,
10 Fox's customers or other persons, expressing any lack of confusion, association,
11 affiliation, connection, correlation, relation, or sponsorship between Fox and
12 Empire Distribution and their respective goods or services, if any such documents
13 are within Fox's possession, custody, or control.

14 **REQUEST FOR PRODUCTION NO. 43:**

15 All DOCUMENTS reflecting, referring or relating to whether or not FOX's
16 use of the "Empire" mark does, may or will infringe, or cause any actual or
17 potential confusion with, EMPIRE DISTRIBUTION'S "Empire" marks.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

19 In addition to the foregoing General Objections, each of which is
20 incorporated herein by reference, Fox objects to this Request because it (a) is vague
21 and ambiguous as to "use"; (b) seeks the production of documents immune from
22 discovery under the attorney-client privilege and work product doctrine; (c) is
23 cumulative and duplicative of Request No. 23; and (d) is argumentative. Subject to,
24 and without waiving, the General Objections and these specific objections, Fox will
25 produce, based on a reasonable inquiry, responsive, non-privileged documents
26 relating to whether Fox's use of the "Empire" mark does, may, or will infringe, or
27 cause any actual or potential confusion with, Empire Distribution, if any such
28 documents are within Fox's possession, custody, or control.

1 **REQUEST FOR PRODUCTION NO. 44:**

2 All DOCUMENTS reflecting, referring or relating to any poll, survey, study,
3 report, analysis, or evaluation done by FOX or on FOX's behalf that relates to the
4 "Empire" mark.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

6 In addition to the foregoing General Objections, each of which is
7 incorporated herein by reference, Fox objects to this Request because it (a) is overly
8 broad and unduly burdensome in seeking all documents reflecting, referring, or
9 relating to any poll, survey, study, report, analysis, or evaluation done by Fox or on
10 Fox's behalf that relates to the "Empire" mark, without regard to whether such
11 documents are relevant to the issues in this action; (b) seeks the production of
12 documents immune from discovery under the attorney-client privilege and work
13 product doctrine; (c) seeks proprietary or confidential business information, trade
14 secrets, or other highly sensitive information; and (d) is cumulative and duplicative
15 of Request No. 7. Subject to, and without waiving, the General Objections and
16 these specific objections, Fox will produce, based on a reasonable inquiry,
17 responsive, non-privileged polls, surveys, studies, reports, analyses, or evaluations
18 done by Fox or on Fox's behalf that relate to confusion between the "Empire" mark
19 and Empire Distribution, if any such documents are within Fox's possession,
20 custody, or control.

21 **REQUEST FOR PRODUCTION NO. 45:**

22 All DOCUMENTS reflecting, referring or relating to any witness retained or
23 specially employed by FOX to provide expert testimony in the case, including, but
24 not limited to, all DOCUMENTS that reflect, refer, or relate to any opinions or
25 conclusions of the expert, the basis of any such opinions or conclusions, any facts
26 or data considered by the expert in forming any such opinions or conclusions, and
27 all DOCUMENTS reviewed or relied upon by the expert in forming his/her
28 opinions or conclusions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; (b) seeks documents protected from disclosure by Rule 26; and (c) is premature in asking or requiring Fox to provide information that is the subject of expert disclosures under Rule 26(a)(2), according to the Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23). Fox will comply with its obligations under Rule 26 and the Court's Scheduling Order.

REQUEST FOR PRODUCTION NO. 46:

All COMMUNICATIONS between FOX's attorneys and any expert witness who is required to provide a report under Fed. R. Civ. P. 26(a)(2)(B), to the extent the COMMUNICATION relates to the compensation for the expert's study or testimony; identifies facts or data that FOX's attorneys provided and that the expert considered in forming his/her opinions to be expressed; or identifies assumptions that FOX's attorneys provided and that the expert relied on in forming the opinions to be expressed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it is premature in asking or requiring Fox to provide information that is the subject of expert disclosures under Federal Rule of Civil Procedure 26(a)(2), according to the Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23). Fox will comply with its obligations under Rule 26 and the Court's Scheduling Order.

REQUEST FOR PRODUCTION NO. 47:

All DOCUMENTS supporting the allegations in paragraph 1 of FOX's COMPLAINT.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it seeks the
4 production of documents immune from discovery under the attorney-client
5 privilege and work product doctrine. Subject to, and without waiving, the General
6 Objections and these specific objections, Fox will produce, based on a reasonable
7 inquiry, responsive, non-privileged documents supporting the allegations in
8 paragraph 1 of Fox's Complaint, if any such documents are within Fox's
9 possession, custody, or control.

10 **REQUEST FOR PRODUCTION NO. 48:**

11 All DOCUMENTS supporting the allegations in paragraph 11 of FOX's
12 COMPLAINT.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

14 In addition to the foregoing General Objections, each of which is
15 incorporated herein by reference, Fox objects to this Request because it seeks the
16 production of documents immune from discovery under the attorney-client
17 privilege and work product doctrine. Subject to, and without waiving, the General
18 Objections and these specific objections, Fox will produce, based on a reasonable
19 inquiry, responsive, non-privileged documents supporting the allegations in
20 paragraph 11 of Fox's Complaint, if any such documents are within Fox's
21 possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 49:**

23 All DOCUMENTS supporting the allegations in paragraph 12 of FOX's
24 COMPLAINT.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

26 In addition to the foregoing General Objections, each of which is
27 incorporated herein by reference, Fox objects to this Request because it seeks the
28 production of documents immune from discovery under the attorney-client

1 privilege and work product doctrine. Subject to, and without waiving, the General
2 Objections and these specific objections, Fox will produce, based on a reasonable
3 inquiry, responsive, non-privileged documents supporting the allegations in
4 paragraph 12 of Fox's Complaint, if any such documents are within Fox's
5 possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 50:**

7 All DOCUMENTS supporting the allegations in paragraph 20 of FOX's
8 COMPLAINT.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

10 In addition to the foregoing General Objections, each of which is
11 incorporated herein by reference, Fox objects to this Request because it seeks the
12 production of documents immune from discovery under the attorney-client
13 privilege and work product doctrine. Subject to, and without waiving, the General
14 Objections and these specific objections, Fox will produce, based on a reasonable
15 inquiry, responsive, non-privileged documents supporting the allegations in
16 paragraph 20 of Fox's Complaint, if any such documents are within Fox's
17 possession, custody, or control.

18 **REQUEST FOR PRODUCTION NO. 51:**

19 All DOCUMENTS supporting the allegations in paragraph 21 of FOX' s
20 COMPLAINT.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

22 In addition to the foregoing General Objections, each of which is
23 incorporated herein by reference, Fox objects to this Request because it seeks the
24 production of documents immune from discovery under the attorney-client
25 privilege and work product doctrine. Subject to, and without waiving, the General
26 Objections and these specific objections, Fox will produce, based on a reasonable
27 inquiry, responsive, non-privileged documents supporting the allegations in

1 paragraph 21 of Fox's Complaint, if any such documents are within Fox's
2 possession, custody, or control.

3 **REQUEST FOR PRODUCTION NO. 52:**

4 All DOCUMENTS supporting the allegations in paragraphs 22 of FOX's
5 COMPLAINT.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

7 In addition to the foregoing General Objections, each of which is
8 incorporated herein by reference, Fox objects to this Request because it seeks the
9 production of documents immune from discovery under the attorney-client
10 privilege and work product doctrine. Subject to, and without waiving, the General
11 Objections and these specific objections, Fox will produce, based on a reasonable
12 inquiry, responsive, non-privileged documents supporting the allegations in
13 paragraph 22 of Fox's Complaint, if any such documents are within Fox's
14 possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 53:**

16 All DOCUMENTS supporting the allegations in paragraph 23 of FOX's
17 COMPLAINT.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

19 In addition to the foregoing General Objections, each of which is
20 incorporated herein by reference, Fox objects to this Request because it seeks the
21 production of documents immune from discovery under the attorney-client
22 privilege and work product doctrine. Subject to, and without waiving, the General
23 Objections and these specific objections, Fox will produce, based on a reasonable
24 inquiry, responsive, non-privileged documents supporting the allegations in
25 paragraph 23 of Fox's Complaint, if any such documents are within Fox's
26 possession, custody, or control.

27

28

1 **REQUEST FOR PRODUCTION NO. 54:**

2 All DOCUMENTS supporting the allegations in paragraph 24 of FOX's
3 COMPLAINT.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

5 In addition to the foregoing General Objections, each of which is
6 incorporated herein by reference, Fox objects to this Request because it seeks the
7 production of documents immune from discovery under the attorney-client
8 privilege and work product doctrine. Subject to, and without waiving, the General
9 Objections and these specific objections, Fox will produce, based on a reasonable
10 inquiry, responsive, non-privileged documents supporting the allegations in
11 paragraph 24 of Fox's Complaint, if any such documents are within Fox's
12 possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 55:**

14 All DOCUMENTS supporting the allegations in paragraphs 25 of FOX's
15 COMPLAINT.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

17 In addition to the foregoing General Objections, each of which is
18 incorporated herein by reference, Fox objects to this Request because it seeks the
19 production of documents immune from discovery under the attorney-client
20 privilege and work product doctrine. Subject to, and without waiving, the General
21 Objections and these specific objections, Fox will produce, based on a reasonable
22 inquiry, responsive, non-privileged documents supporting the allegations in
23 paragraph 25 of Fox's Complaint, if any such documents are within Fox's
24 possession, custody, or control.

25 **REQUEST FOR PRODUCTION NO. 56:**

26 All DOCUMENTS supporting the allegations in paragraph 26 of FOX's
27 COMPLAINT.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it seeks the
4 production of documents immune from discovery under the attorney-client
5 privilege and work product doctrine. Subject to, and without waiving, the General
6 Objections and these specific objections, Fox will produce, based on a reasonable
7 inquiry, responsive, non-privileged documents supporting the allegations in
8 paragraph 26 of Fox's Complaint, if any such documents are within Fox's
9 possession, custody, or control.

10 **REQUEST FOR PRODUCTION NO. 57:**

11 All DOCUMENTS supporting the allegations in paragraph 27 of FOX's
12 COMPLAINT.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

14 In addition to the foregoing General Objections, each of which is
15 incorporated herein by reference, Fox objects to this Request because it seeks the
16 production of documents immune from discovery under the attorney-client
17 privilege and work product doctrine. Subject to, and without waiving, the General
18 Objections and these specific objections, Fox will produce, based on a reasonable
19 inquiry, responsive, non-privileged documents supporting the allegations in
20 paragraph 27 of Fox's Complaint, if any such documents are within Fox's
21 possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 58:**

23 All DOCUMENTS upon which FOX's answer or affirmative defenses to the
24 COUNTERCLAIMS are based including, but not limited to, its first affirmative
25 defense purportedly based on the First Amendment to the United States
26 Constitution.

27

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

2 In addition to the foregoing General Objections, each of which is
3 incorporated herein by reference, Fox objects to this Request because it (a) seeks
4 the production of documents immune from discovery under the attorney-client
5 privilege and work product doctrine; and (b) seeks documents otherwise available
6 to the public and defendant. Subject to, and without waiving, the General
7 Objections and these specific objections, Fox will produce, based on a reasonable
8 inquiry, responsive, non-privileged documents upon which Fox's answer or
9 affirmative defenses to the Counterclaims are based, if any such documents are
10 within Fox's possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 59:**

12 All DOCUMENTS identified or referenced in FOX's Initial Disclosures,
13 pursuant to Fed. R. Civ. P. 26(a)(1).

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

15 In addition to the foregoing General Objections, each of which is
16 incorporated herein by reference, Fox objects to and is unable to respond to this
17 Request because Fox's Initial Disclosures did not identify or reference any
18 particular documents but rather identified categories of documents.

19 Dated: August 20, 2015

20 DANIEL M. PETROCELLI
21 MOLLY M. LENZ
22 CAMERON H. BISCAY
23 O'MELVENY & MYERS LLP

24 By: /s/ Molly M. Lens
25 Molly M. Lens
26 Attorneys for Twentieth Century Fox
27 Television, a division of Twentieth
28 Century Fox Film Corporation, and Fox
Broadcasting Company

PROOF OF SERVICE BY MAIL

2 I am a citizen of the United States and employed in Los Angeles County,
3 California, at the office of a member of the bar of this Court at whose direction this
4 service was made. I am over the age of eighteen years and not a party to the within
5 action. I am a resident of or employed in the county where the service described below
6 occurred. My business address is 1999 Avenue of the Stars, Los Angeles, California
7 90067-6035. I am readily familiar with this firm's practice for collection and processing
8 of correspondence for mailing with the United States Postal Service. In the ordinary
9 course of business, correspondence collected from me would be processed on the same
10 day, with postage thereon fully prepaid and placed for deposit that day with the United
11 States Postal Service. On August 20, 2015, I served following:

**FOX'S RESPONSE TO DEFENDANT'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid, and placing the envelope for collection and mailing today with the United States Postal Service in accordance with the firm's ordinary business practices, addressed as follows:

Paul L. Gale
Peter N. Villar
TROUTMAN SANDERS LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614

John M. Bowler
Michael D. Hobbs, Jr.
TROUTMAN SANDERS LLP
600 Peachtree St., NE Suite 5200
Atlanta, GA 30308

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on August 20, 2015, at Los Angeles, California.


Tylar R. Moore

EXHIBIT C

PETER N. VILLAR
949.622.2783 telephone
949.622.2739 facsimile
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TROUTMAN SANDERS

TROUTMAN SANDERS LLP
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949.622.2700 telephone
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September 25, 2015

VIA E-MAIL

Molly M. Lens, Esq.
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Re: Twentieth Century Fox Television, et al. v. Empire Distribution, Inc.

Dear Ms. Lens:

On July 17, 2015, your office was served with Empire Distribution, Inc.'s ("Empire") First Request for Production of Documents to Twentieth Century Fox Television, Twentieth Century Fox Film Corporation, and Fox Broadcasting Company (collectively "Fox"). In August 2015, Empire also served Subpoenas to Produce Documents on various third parties. Your office has undertaken to respond to the First Request for Production as well as the Subpoenas to Fox Music, Inc., Daniel Strong, and Lee Daniels Entertainment.¹ Pursuant to L.R. 37-1, we write in an effort to resolve the following deficiencies with each of the responses to this discovery.

I. First Request for Production of Documents

As a preliminary matter, Fox's refusal to produce documents outside of its self-defined relevant time period is baseless. Fox objects to requests seeking documents *prior to* the time that Fox learned of the series that became the *EMPIRE SERIES* and to requests seeking information *after* the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Fox must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox and others then developed into a unified television series. Such documents may predate the existence of the "series" itself. Fox also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark, its ever expanding use of such mark, and intended future use of the mark are highly relevant to this case.

¹ Lee Daniels Entertainment stipulated that it has "possession, custody, or control" over any and all documents that Lee Daniels may have and, therefore, the parties agreed that the subpoena directed at Lee Daniels personally did not have to be served or responded to.

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a. REQUEST NOS. 1 & 2

Fox improperly limits its response to “documents that reflect, refer, or relate to the use of the mark ‘Empire’” in connection with Fox’s creation and development of the *EMPIRE SERIES* from the time of conception of the series that became *Empire* through January 7, 2015. Empire’s claim and document request is not limited to Fox’s use of the mark ‘Empire,’ but also relates to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “the right of privacy of the talent” is also improper in light of the Protective Order Concerning Confidential Information issued by the Court on September 24, 2015. Fox must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series, as well as communications between Fox and Lee Daniels or Danny Strong and their representatives regarding the same.

b. REQUEST NO. 3

Fox improperly limits its response to “documents sufficient to show any alternate names.” Empire’s claim and document request is not limited to Fox’s use of the mark ‘Empire,’ but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is misleading. Meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what

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meaning and commercial impression Fox intended to communicate to the public through the name of the series, including the discussions and reasoning why alternate names were not used.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 3 must be produced.

c. REQUEST NO. 6

Fox improperly limits its response to “documents submitted to the United States Patent and Trademark Office regarding Fox’s application to register ‘Empire’ as a trademark and responses received thereto.” This request seeks all documents relating to any attempts by Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 6 must be produced, including non-privileged documents and communications other than those directly with the USPTO.

d. REQUEST NO. 8

Fox has improperly refused to produce documents relating to its “intellectual property rights in and to the fictional television series *Empire* and the music therefrom, including copyright and trademark rights” as alleged in paragraph 3 of the Complaint. The request is limited to documents that Fox put at issue in this case. These documents are therefore plainly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or

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confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 8 must be produced.

e. REQUEST NOS. 11 & 12

Fox has improperly limited its response to "exemplars" of promotions, advertisements, and marketing efforts and executed contracts. The limited production of exemplars does not fulfill Fox's obligation to produce relevant documents. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request Nos. 11 and 12 must be produced.

f. REQUEST NO. 13

Fox improperly limits its response to "executed agreements" relating to *EMPIRE SERIES MUSIC*. The unnecessarily limited production of only executed agreements does not fulfill Fox's obligation to produce relevant documents relating to the sale, license, distribution or release of *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or

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confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 13 must be produced.

g. REQUEST NO. 14

Fox's objection based on "the right of privacy of the talent" is improper in light of the Court's Protective Order. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 14 must be produced.

h. REQUEST NO. 15

Fox has improperly refused to produce any documents responsive to this document request which seeks all agreements, contracts or communications between Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "the right of privacy of the talent" is also improper in light of the Court's Protective Order. All documents requested in Request No. 15 must be produced.

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i. REQUEST NOS. 16 & 17

Fox improperly limits its response to documents and communications referring or relating to “use of the mark ‘Empire’” in connection with the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*. Empire’s claim and document request are not limited to Fox’s use of the mark ‘Empire,’ but also relate to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or confidential business information” is also improper in light of the Court’s Protective Order. Fox must produce documents and communications relating to the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC* generally, including, but not limited to, documents and communications relating to the use of the ‘Empire’ mark.

j. REQUEST NO. 18

Fox has improperly refused to produce any documents responsive to this document request which seeks documents reflecting, referring or relating to FOX’s online account with Mediabase. Mediabase produces song charts based on monitored airplay to provide music industry analytics. Fox or others on its behalf have provided promotional content to Mediabase, and is functioning as a record label. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or

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confidential business information" is also improper in light of the Court's Protective Order. Fox must produce documents relating to its involvement with Mediabase and its music industry analytics.

k. REQUEST NO. 25

Fox improperly limits its response to "documents sufficient to show sales," and does not address the remainder of Empire's request, which seeks not only present but also "prospective" sales, marketing or business plans/strategies regarding products or services provided in connection with the "Empire" mark. Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case. In addition, Empire's claim and document request relate to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox must produce documents relating to present and prospective sales, marketing, or business plans/strategies, including, but not limited to, documents showing sales to date as requested in Request No. 25.

l. REQUEST NO. 30

Fox has improperly refused to produce any documents responsive to this document request which seeks documents sufficient to show each purchase of any good or service offered for sale, sold, promoted, or advertised under or in association with the "Empire" mark. Empire's claim and document request relate to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

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Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 30 must be produced.

m. REQUEST NO. 34

Fox improperly limits its response to documents referring or relating to publicity or news relating to "use of the mark 'Empire.'" These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

There has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox and the fact that publicly-available documents are in Fox's possession, custody, or control may be highly relevant and pursued in a deposition of Fox. Fox must produce documents relating to publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC* generally, including, but not limited to, those relating to the use of the 'Empire' mark.

n. REQUEST NO. 37

Fox improperly limits its response to documents "sent to a third party regarding any objection or concern by Fox regarding that third-party's existing or intended use of the 'Empire' mark." Empire's request also seeks documents relating to any expression of concern "by any third party to FOX relating to FOX's...existing or intended use of the 'Empire' mark." There has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 37 must be produced.

o. REQUEST NO. 44

Fox improperly limits its response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus

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group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 44 must be produced.

II. Daniel Strong Subpoena to Produce Documents

Mr. Strong's refusal to produce documents outside of a self-defined relevant time period is baseless. Namely, Mr. Strong objects to requests seeking documents prior to the time that he learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. See General Objection No. 6. Mr. Strong must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Mr. Strong also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

a. REQUEST NO. 1:

Mr. Strong improperly limits his response to "documents that reflect, refer, or relate to the use of the mark 'Empire' in connection with Mr. Strong's creation and development of the *EMPIRE SERIES* from the time he became involved with the series that became *Empire* through January 7, 2015. Empire's claim and subpoena request is not limited to Mr. Strong's use of the mark 'Empire,' but also relates to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a

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likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

There has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series.

b. REQUEST NO. 3:

With respect to alternate names for the series that were considered, proposed, or discussed, Mr. Strong improperly limits his response to “documents sufficient to show any alternate names.” Empire’s claim and subpoena request is not limited to Mr. Strong’s use of the name “Empire,” but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

There has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong must produce all documents regarding all meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what meaning and commercial impression Mr. Strong intended to communicate to the public through the name of the series and the discussions and reasoning why alternate names were not used.

c. REQUEST NO. 6

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Mr. Strong or Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant

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to the issues in this case, and there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 6 must be produced.

d. REQUEST NO. 9

Mr. Strong has improperly limited his response to “documents sufficient to reflect the use of a city skyline graphic in conjunction with the ‘Empire’ mark/logo.” Empire’s claim is not limited to Fox or Mr. Strong’s use of the name “Empire” or the city skyline graphic in conjunction with the “Empire” mark/logo, but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Empire’s subpoena request therefore seeks all documents reflecting, referring or relating to use of such city skyline graphic, including, without limitation, all communications regarding such use of the city skyline graphic which are highly relevant to determining why the city skyline graphic was chosen, what meaning and commercial impression was intended to be conveyed to the public by use of the city skyline in conjunction with the “Empire” mark/logo, and the discussions and communications regarding such use.

e. REQUEST NO. 10.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to any advertisements, promotions or marketing efforts by Mr. Strong or Fox using the “Empire” mark/logo. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

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Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 10 must be produced.

f. REQUEST NO. 11.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 11 must be produced.

g. REQUEST NO. 12.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In

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addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents from his own files. All documents requested in Request No. 12 must be produced.

h. REQUEST NO. 14.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between him or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong’s objection based on “the right of privacy of the talent” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 14 must be produced.

i. REQUEST NO. 15.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all communications between him and FOX, or any other person or entity, regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between

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the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "the right of privacy of the talent" is also improper in light of the Court's Protective Order. All documents requested in Request No. 15 must be produced.

j. REQUEST NO. 16.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including but not limited to whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, control, or control. All documents requested in Request No. 16 must be produced.

k. REQUEST NO. 18.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand

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and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Mr. Strong and the fact that publicly-available documents are in Mr. Strong's possession, custody, or control may be highly relevant and pursued in a deposition of Fox.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 18 must be produced.

I. REQUEST NO. 22.

Mr. Strong has improperly limited his response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including but not limited to those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 22 must be produced.

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m. REQUEST NO. 23.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the complaint of Fox or counterclaims of Empire. These documents are highly relevant to the issues in this case. Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents from its own files. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 23 must be produced.

n. REQUEST NO. 24.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to Empire. These documents are highly relevant to the issues in this case. Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Mr. Strong and the fact that publicly-available documents are in Mr. Strong's possession, custody, or control may be highly relevant and pursued in a deposition of Mr. Strong. All documents requested in Request No. 24 must be produced.

o. REQUEST NO. 26.

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Lee Daniels Entertainment, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

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Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 26 must be produced.

III. Fox Music, Inc. Subpoena to Produce Documents

Fox Music's refusal to produce documents outside of its self-defined relevant time period is baseless. Namely, Fox Music objects to requests seeking documents prior to the time that Fox Music learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Fox Music must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Fox Music also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

a. REQUEST NOS. 1 & 2

Fox Music improperly limits its response to documents referring or relating to Empire Distribution, the *EMPIRE SERIES*, and *EMPIRE SERIES MUSIC* and their "use of the 'Empire' name." These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music. In addition, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music must produce documents relating to relating to the

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Empire Distribution and the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC* generally, including, but not limited to, those relating to the use of the 'Empire' name.

b. REQUEST NO. 5

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Fox Music to register 'Empire' or any other name, mark, logo or symbol relating to *EMPIRE SERIES MUSIC*. Fox Music's decision to pursue trademark protection for names and symbols used in conjunction with its music goods and services, which overlap with Empire's goods and services, and the circumstances surrounding that decision are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. All documents requested in Request No. 5 must be produced.

c. REQUEST NO. 7

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue

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burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 7 must be produced.

d. REQUEST NO. 8

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents from its own files. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 8 must be produced.

e. REQUEST NO. 9

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between it or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant

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to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "the right of privacy of the talent" is also improper in light of the Court's Protective Order. All documents requested in Request No. 9 must be produced.

f. REQUEST NOS. 10 & 11

Fox improperly refuses to produce documents referring or relating to the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request Nos. 10 and 11 must be produced.

g. REQUEST NO. 12

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters,

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business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. All documents requested in Request No. 12 must be produced.

h. REQUEST NO. 13

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any present or prospective sales, marketing or business plans/strategies regarding the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music’s objection based on “proprietary or confidential business information” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 13 must be produced.

i. REQUEST NO. 14

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any revenues, expenses, and profits relating to all goods and services sold, or offered for sale, in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the

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parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 14 must be produced.

j. REQUEST NO. 15

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to relating to the total volume of sales for all goods and services sold in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. All documents requested in Request No. 15 must be produced.

k. REQUEST NO. 16

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the amounts spent to advertise, market and promote goods or services in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at

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issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 16 must be produced.

I. REQUEST NO. 17

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These publicity documents are highly relevant to the issues in this case. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 17 must be produced.

m. REQUEST NO. 18

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to anyone other than FOX that has used or is using the designation or word "Empire" in the music industry. These documents are highly relevant to the issues in this case. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music.

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Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 18 must be produced.

n. REQUEST NO. 21

Fox Music improperly limits its response to documents relating to “confusion between the ‘Empire’ mark and Empire Distribution.” Empire’s subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the “Empire” mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading. All documents requested in Request No. 21 must be produced.

o. REQUEST NO. 23

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Fox Music, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents or that there is any undue burden on

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Fox Music in producing the documents from its own files. All documents requested in Request No. 23 must be produced.

IV. Lee Daniels Entertainment Subpoena to Produce Documents

Lee Daniels Entertainment's refusal to produce documents outside of its self-defined relevant time period is baseless. Namely, Lee Daniels Entertainment objects to requests seeking documents prior to the time that it learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Lee Daniels Entertainment must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Lee Daniels Entertainment also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

a. REQUEST NO. 1:

Lee Daniels Entertainment improperly limits its response to "documents that reflect, refer, or relate to the use of the mark 'Empire'" in connection with Lee Daniels Entertainment's creation and development of the *EMPIRE SERIES* from the time Lee Daniels Entertainment became involved with the series that became *Empire* through January 7, 2015. Empire's claim and subpoena request is not limited to Fox or Lee Daniels Entertainment's use of the mark 'Empire,' but also relates to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. Lee Daniels Entertainment must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series.

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b. REQUEST NO. 3:

With respect to alternate names for the series that were considered, proposed, or discussed, Lee Daniels Entertainment improperly limits its response to “documents sufficient to show any alternate names.” Empire’s claim and subpoena request is not limited to Fox or Lee Daniels Entertainment’s use of the name “empire,” but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. Lee Daniels Entertainment must produce all documents regarding all meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what meaning and commercial impression Lee Daniels Entertainment intended to communicate to the public through the name of the series and the discussions and reasoning why alternate names were not used.

c. REQUEST NO. 6

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Lee Daniels Entertainment or Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant to the issues in this case, and there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 6 must be produced.

d. REQUEST NO. 9

Lee Daniels Entertainment has improperly limited its response to “documents sufficient to reflect the use of a city skyline graphic in conjunction with the “Empire” mark/logo.” Empire’s claim is not limited to Fox or Lee Daniels Entertainment’s use of the name “Empire” or the city skyline graphic in conjunction with the “Empire” mark/logo, but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between

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the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. Empire's subpoena request therefore seeks all documents reflecting, referring or relating to use of such city skyline graphic, including, without limitation, all communications regarding such use of the city skyline graphic which are highly relevant to determining why the city skyline graphic was chosen, what meaning and commercial impression was intended to be conveyed to the public by use of the city skyline in conjunction with the "Empire" mark/logo, and the discussions and communications regarding such use.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 9 must be produced.

e. REQUEST NO. 10.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to any advertisements, promotions or marketing efforts by Lee Daniels Entertainment or Fox using the "Empire" mark/logo. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 10 must be produced.

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f. REQUEST NO. 11.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 11 must be produced.

g. REQUEST NO. 12.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative,

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non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 12 must be produced.

h. REQUEST NO. 14.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between Lee Daniels Entertainment or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 14 must be produced.

i. REQUEST NO. 15.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all communications between Lee Daniels Entertainment and FOX, or any other person or entity, regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to

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determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment’s objection based on “the right of privacy of the talent” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 15 must be produced.

j. REQUEST NO. 16.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 16 must be produced.

k. REQUEST NO. 18.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap

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between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Lee Daniels Entertainment and the fact that publicly-available documents are in Lee Daniels Entertainment's possession, custody, or control may be highly relevant and pursued in a deposition of Lee Daniels Entertainment. All documents requested in Request No. 18 must be produced.

I. REQUEST NO. 22.

Lee Daniels Entertainment has improperly limited its response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order.

m. REQUEST NO. 23.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the complaint of Fox or counterclaims of Empire. These documents are highly relevant to the issues in this case.

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Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 23 must be produced.

n. REQUEST NO. 24.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to Empire. These documents are highly relevant to the issues in this case. There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files.

Further, Empire is not required to guess what documents that are "available to the public" Lee Daniels Entertainment may have in its possession, custody, or control and the fact that they are in Lee Daniels' possession, custody, or control may be highly relevant and pursued in a deposition of Lee Daniels Entertainment. All documents requested in Request No. 24 must be produced.

o. REQUEST NO. 26.

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Lee Daniels Entertainment, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative,

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non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 26 must be produced.

We reserve the right to raise additional issues including, but not limited to, any issues raised by Fox with regard to Empire's responses to requests for production of documents. Pursuant to Local Rule 37-1, please provide your availability for a telephone conference within the next ten days, to discuss these issues.

Sincerely,

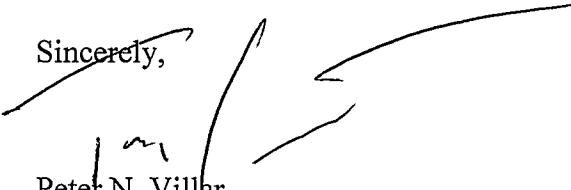

Peter N. Villar

EXHIBIT D

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY FOX
TELEVISION, et al.

Plaintiff,

v.

EMPIRE DISTRIBUTION, INC.,

Defendants.

No. CV 15-2158 PA (FFMx)

PROTECTIVE ORDER CONCERNING
CONFIDENTIAL INFORMATION

The Court enters the following protective order:

1. In connection with discovery proceedings in this action, the parties may designate any document, thing, material, testimony or other information derived therefrom, as "Confidential" under the terms of this Protective Order (hereinafter "Order"). Confidential information is trade secrets, proprietary information, and other highly confidential commercial information, or material required to be kept confidential by state or federal law.

2. By designating a document, thing, material, testimony or other information derived therefrom as "Confidential" under the terms of this Order, the party making the designation is certifying to the Court that there is a good faith basis in law and in fact for the designation within the meaning of Federal Rule of Civil Procedure 26(g).

1 3. Confidential documents shall be so designated by stamping copies of the
2 document produced to a party with the legend "CONFIDENTIAL." Stamping the legend
3 "CONFIDENTIAL" on the cover of any multi-page documents shall designate all pages of
4 the document as confidential, unless otherwise indicated by the producing party.

5 4. Testimony taken at a deposition may be designated as confidential by making
6 a statement to that effect on the record at the deposition. Arrangements shall be made with
7 the court reporter taking and transcribing such deposition to separately bind such portions of
8 the transcript containing information designated as confidential, and to label such portions
9 appropriately.

10 5. Material designated as confidential under this Order, the information
11 contained therein, and any summaries, copies, abstracts, or other documents derived in
12 whole or in part from material designated as confidential (hereinafter “Confidential
13 Material”) shall be used only for the purpose of the prosecution, defense, or settlement of
14 this action, and for no other purpose.

15 6. Confidential Material produced pursuant to this Order may be disclosed or
16 made available only to the Court, to counsel for a party (including the paralegal, clerical, and
17 secretarial staff employed by such counsel), and to the “qualified persons” designated below:

- (a) a party, or an officer, director, or employee of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this action;
- (b) experts or consultants (together with their clerical staff) retained by such counsel to assist in the prosecution, defense, or settlement of this action;
- (c) court reporter(s) employed in this action;
- (d) a witness at any deposition or other proceeding in this action; and
- (e) any other person as to whom the parties in writing agree.

27 Prior to receiving any Confidential Material, each “qualified person” shall be provided with
28 a copy of this Order and shall execute a nondisclosure agreement in the form of Attachment

1 A, a copy of which shall be provided forthwith to counsel for each other party and for the
2 parties.

3 7. Only qualified persons may attend depositions at which Confidential Material
4 is used or discussed.

5 8. The parties may further designate certain discovery material or testimony of a
6 highly confidential and/or proprietary nature as “CONFIDENTIAL - ATTORNEY’S EYES
7 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in
8 paragraphs 2 and 3 above. Attorney’s Eyes Only Material, and the information contained
9 therein, shall be disclosed only to the Court, to counsel for the parties (including the
10 paralegal, clerical and secretarial staff employed by such counsel), and to the “qualified
11 persons” listed in subparagraphs 6(b) through (e) above, but shall not be disclosed to a party,
12 or to an officer, director or employee of a party, unless otherwise agreed or ordered. If
13 disclosure of Attorney’s Eyes Only Material is made pursuant to this paragraph, all other
14 provisions in this order with respect to confidentiality shall also apply.

15 9. Nothing herein shall impose any restrictions on the use or disclosure by a party
16 of material obtained by such party independent of discovery in this action, whether or not
17 such material is also obtained through discovery in this action, or from disclosing its own
18 Confidential Material as it deems appropriate.

19 10. If Confidential Material, including any portion of a deposition transcript
20 designated as Confidential or Attorney's Eyes Only, is included in any papers to be filed with
21 the Court, such papers shall be accompanied by an application to (a) file the confidential
22 portions thereof under seal (if such portions are segregable), or (b) file the papers in their
23 entirety under seal (if the confidential portions are not segregable). The application shall be
24 directed to the judge to whom the papers are directed. Pending the ruling on the application,
25 the papers or portions thereof subject to the sealing application shall be lodged under seal.

26 11. This Order shall be without prejudice to the right of the parties (i) to bring
27 before the Court at any time the question of whether any particular document or information
28 is confidential or whether its use should be restricted or (ii) to present a motion to the Court

1 under Fed. R. Civ. P. 26(c) for a separate protective order as to any particular document or
2 information, including restrictions differing from those as specified herein. This Order shall
3 not be deemed to prejudice the parties in any way in any future application for modification
4 of this Order.

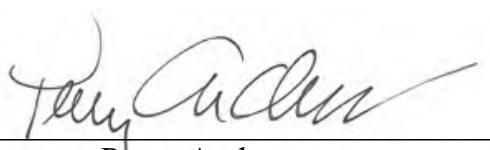
5 12. This Order is entered solely for the purpose of facilitating the exchange of
6 documents and information between the parties to this action without involving the Court
7 unnecessarily in the process. Nothing in this Order nor the production of any information or
8 document under the terms of this Order nor any proceedings pursuant to this Order shall be
9 deemed to have the effect of an admission or waiver by either party or of altering the
10 confidentiality or nonconfidentiality of any such document or information or altering any
11 existing obligation of any party or the absence thereof.

12 13. This Order shall survive the final termination of this action, to the extent that
13 the information contained in Confidential Material is not or does not become known to the
14 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
15 information disclosed hereunder. Upon termination of this case, counsel for the parties shall
16 assemble and return to each other all documents, material and deposition transcripts
17 designated as confidential and all copies of same, or shall certify the destruction thereof.

18 IT IS SO ORDERED.

19

20 DATED: September 24, 2015



21 Percy Anderson
22 UNITED STATES DISTRICT JUDGE
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1 Attachment A

2 **Nondisclosure Agreement**

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4 I, _____, do solemnly swear that I am fully familiar with the terms of

5 the Protective Order Concerning Confidential Information entered in Twentieth Century Fox

6 Television, et al. v. Empire Distribution, Inc., United States District Court for the Central

7 District of California, Civil Action No. CV 15-2158 PA (FFMx), and hereby agree to

8 comply with and be bound by the terms and conditions of said Order unless and until

9 modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for

10 purposes of enforcing this nondisclosure agreement.

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12 DATED: _____

13 [Name of Signator Typed]

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EXHIBIT E

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY FOX
TELEVISION, et al.,
Plaintiff,
v.
EMPIRE DISTRIBUTION, INC.,
Defendant.

Case No. CV15-2158 PA (FFMx)
SCHEDULING ORDER [FED. R. CIV. P.
16(b)]
1. Establishing a Discovery Cut-off
Date of 1/25/2016
2. Setting Motion Cut-off date of
2/1/2016
3. Setting Final Pretrial Conference for
3/4/2016, at 1:30 p.m.
4. Setting Jury Trial Date of 4/5/2016,
at 9:00 a.m.

1. Discovery Cut-Off. This is the last date to complete discovery, including expert discovery, and the resolution of any discovery motions before the magistrate judge. If expert witnesses are to be called at trial, the parties shall designate experts to be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B), not later than eight weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall be designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B), not later than five weeks prior to the discovery cutoff date. Failure to timely comply with this deadline may result in the expert being excluded at trial as a witness. The Court requires compliance with Local Rule 37-1

1 and 37-2 in the preparation and filing of discovery motions. Discovery motions may not be
2 heard on an ex parte basis.

3 2. Joinder of Parties and Amendment of Pleadings. The deadline for joining parties
4 and amending pleadings is listed in the "Schedule of Trial and Pretrial Dates" issued by the
5 Court. Any motions to join other parties or for leave to amend the pleadings shall be filed
6 and served at least twenty-eight (28) days prior to the hearing deadline as required by Local
7 Rule 6-1 so that they can be heard and decided prior to the deadline. This deadline does not
8 apply if the deadline for joining parties or amending pleadings has already been calendared
9 or occurred by virtue of an order issued by this Court or another court.

10 In addition to the requirements of Local Rule 15-1, all motions to amend the
11 pleadings shall (1) state the effect of the amendment; (2) be serially numbered to
12 differentiate the amendment from previous amendments and (3) state the page, line
13 number(s), and wording of any proposed change or addition of material.

14 For the Court's ease of reference, the moving party shall submit to chambers a
15 redlined version of the amended pleading.

16 3. Motion Filing Cut-Off. The Court hears motions on Mondays at 1:30 p.m. The
17 motion filing cut-off date is the last day motions may be heard (not filed). The Court will
18 not decide late motions. Issues left undetermined by the passage of the motion cut-off date
19 should be listed as issues for trial in the Final Pretrial Conference Order. As an exception to
20 the above, motions in limine dealing with evidentiary matters may be heard at or before trial;
21 however, summary judgment motions disguised as motions in limine will not be heard.
22 Parties need not wait until the discovery cut-off to bring motions for summary judgment or
23 partial summary judgment. However, in the usual case, the Court expects that more than the
24 minimum notice will be provided to counsel opposing motions for summary judgment. In
25 the usual case, the parties should confer and agree on the date for setting such motions.

26 Ex parte applications are entertained solely for extraordinary relief. See Mission
27 Power Eng. Co. v. Continental Casualty Co., 883 F.Supp. 488 (C.D. Cal. 1995). Strict
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1 adherence to proper ex parte procedures is required for any ex parte application filed with
2 the Court.

3 4. Stipulations to Extend Time. Stipulations to extend the time to file any required
4 document or to continue any pretrial or trial date must set forth:

5 (a) the existing due date or hearing date;
6 (b) the current pretrial conference date and trial date;
7 (c) the specific reasons supporting good cause for granting the extension or
8 continuance. For example, a statement that a continuance “will promote settlement” or that
9 the parties decided to suspend discovery while engaging in settlement discussions is
10 insufficient.

11 (d) whether there have been any prior requests for extensions or continuances, and
12 whether these were granted or denied by the Court.

13 5. Summary Judgment Motions. The Separate Statement of Undisputed Facts is to be
14 prepared in a two column format. The left hand column should set forth the allegedly
15 undisputed fact. The right hand column should set forth the evidence that supports the
16 factual statement. The fact statements should be set forth in sequentially numbered
17 paragraphs. Each paragraph should contain a narrowly focused statement of fact. Each
18 numbered paragraph should address a single subject in as concise a manner as possible.

19 The opposing party’s statement of genuine issues must be in two columns and
20 track the movant’s separate statement exactly as prepared. The document must be in two
21 columns; the left hand column must restate the allegedly undisputed fact, and the right hand
22 column must indicate either undisputed, or disputed. The opposing party may dispute all or
23 only a portion of the statement, but if disputing only a portion, must clearly indicate what
24 part is being disputed. Where the opposing party is disputing the fact in whole or part, the
25 opposing party must, in the right hand column, label and restate the moving party’s evidence
26 in support of the fact, followed by the opposing party’s evidence controverting the fact.
27 Where the opposing party is disputing the fact on the basis of an evidentiary objection, the
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1 party must cite to the evidence alleged to be objectionable and state the ground of the
2 objection and nothing more. **No argument should be set forth in this document.**

3 The opposing party may submit additional material facts that bear on or relate to
4 the issues raised by the movant, which shall follow the format described above for the
5 moving party's separate statement. These additional facts shall follow the movant's facts,
6 shall continue in sequentially numbered paragraphs (i.e., if movant's last statement of fact
7 was set forth in paragraph 30, then the first new fact will be set forth in paragraph 31), and
8 shall set forth in the right hand column the evidence that supports that statement.

9 The moving party, in its reply, shall respond to the additional facts in the same
10 manner and format that the opposition party is required to adhere to in responding to the
11 statement of undisputed facts, as described above.

12 (a) Supporting Evidence. No party should submit any evidence other than the
13 specific items of evidence or testimony necessary to support or controvert a proposed
14 statement of undisputed fact. Thus, for example, the entire transcript of a deposition, entire
15 sets of interrogatory responses, and documents that do not specifically support or controvert
16 material in the separate statements, should not be submitted in support or opposition to a
17 motion for summary judgment. Any such material will not be considered.

18 Evidence submitted in support or opposition to a motion should be submitted
19 either by way of stipulation or as exhibits to declarations sufficient to authenticate the
20 proffered evidence, and should not be attached to the Memorandum of Points and
21 Authorities. The Court will accept counsel's authentication of deposition transcript, of
22 written discovery responses, and of the receipt of documents in discovery if the fact that
23 the document was in the opponent's possession is of independent significance.

24 Documentary evidence as to which there is no stipulation regarding foundation must be
25 accompanied by the testimony, either by declaration or properly authenticated deposition
26 transcript, of a witness who can establish its authenticity.

27 If evidence in support of or in opposition to a motion exceeds twenty pages, the
28 evidence must be in a separate bound volume and include a Table of Contents.

Separate Statement Paragraph 1: Objection to the supporting deposition transcript of Jane Smith at 60:1-10 on the grounds that the statement constitutes inadmissible hearsay and no exception is applicable. To the extent it is offered to prove her state of mind, it is irrelevant since her state of mind is not in issue.

Fed. R. Evid. 801, 802.

17 Do not submit blanket or boilerplate objections to the opponent's statements of
18 undisputed fact: these will be disregarded and overruled.

19 (c) The Memorandum of Points and Authorities. The movant's memorandum of
20 points and authorities should be in the usual form required under Local Rule 7 and should
21 contain a narrative statement of facts as to those aspects of the case that are before the Court.
22 All facts should be supported with citations to the paragraph number in the Separate
23 Statement that supports the factual assertion and not to the underlying evidence.

24 Unless the case involves some unusual twist on Rule 56, the motion need only
25 contain a brief statement of the Rule 56 standard; the Court is familiar with the Rule and
26 with its interpretation under Celotex and its progeny. If at all possible, the argument should
27 be organized to focus on the pertinent elements of the cause(s) of action or defense(s) in

1 issue, with the purpose of showing the existence or non-existence of a genuine issue of
2 material fact for trial on that element of the claim or defense.

3 Likewise, the opposition memorandum of points and authorities should be in the
4 usual form required by Local Rule 7, and where the opposition memorandum sets forth
5 facts, the memorandum should cite to paragraphs in the separate statement if they are not in
6 dispute, to the evidence that contravenes the fact where the fact is in dispute, or, if the fact is
7 contravened by an additional fact in the statement of genuine issues, the citation should be to
8 such fact by paragraph number.

9 (d) Timing. In virtually every case, the Court expects that the moving party will
10 provide more than the minimum twenty-eight (28) day notice for such motions. The moving
11 party shall submit a copy of the Statement of Uncontroverted Facts and Conclusions of Law
12 to the Court's ECF e-mail address, in WordPerfect format (X6 or earlier versions) or
13 Microsoft Word (Word 2010 or earlier versions).

14 6. Motions in Limine. Before filing any motion in limine, counsel for the parties
15 shall confer pursuant to Local Rule 7-3 in a good faith effort to eliminate the necessity for
16 hearing the motion in limine or to eliminate as many of the disputes as possible. It shall be
17 the responsibility of counsel for the moving party to arrange for this conference. The
18 conference shall take place in person within seven days of service upon opposing counsel of
19 a letter requesting such conference. Unless counsel agree otherwise, the conference shall
20 take place at the office of the moving party. If both counsel are not located in the same
21 county in the Central District, the conference may take place by telephone. The moving
22 party's letter shall identify the testimony, exhibits, or other specific matters alleged to be
23 inadmissible and/or prejudicial, shall state briefly with respect to each such matter the
24 moving party's position (and provide any legal authority which the moving party believes is
25 dispositive), and specify the terms of the order to be sought.

26 (a) If counsel are unable to resolve their differences, they shall prepare a Joint
27 Motion in Limine. The Joint Motion in Limine shall consist of one document signed by all
28 counsel. The Joint Motion in Limine shall contain a clear identification of the testimony,

1 exhibits, or other specific matters alleged to be inadmissible and/or prejudicial and a
2 statement of the specific prejudice that will be suffered by the moving party if the motion is
3 not granted. The identification of the matters in dispute shall be followed by each party's
4 contentions and each party's memorandum of points and authorities. The title page of the
5 Joint Motion in Limine must state the hearing date for the motions in limine and the trial
6 date.

7 (b) Unless otherwise ordered by the Court, motions in limine will be heard on the
8 date indicated in the Schedule of Trial and Pretrial Dates issued by the Court. Unless the
9 Court in its discretion otherwise allows, no motions in limine shall be filed or heard on an ex
10 parte basis absent a showing of irreparable injury or prejudice not attributable to the lack of
11 diligence of the moving party. The moving party shall serve its portion of the Joint Motion
12 in Limine on the responding party fourteen (14) days prior to the date for filing of motions
13 in limine indicated in the Schedule of Trial and Pretrial Dates. The responding party shall
14 then serve the opposition portion of the Joint Motion in Limine on the moving party both on
15 paper and in an electronic format seven (7) days prior to the date for the filing of motions in
16 limine. The moving party shall incorporate the responding party's portion into the Joint
17 Motion in Limine, add its arguments in reply, and file and serve the Joint Motion in Limine.
18 Neither party's portions of a Joint Motion in Limine shall exceed eight (8) pages.

19 (c) Joint Motions in Limine made for the purpose of precluding the mention or
20 display of inadmissible and/or prejudicial matter in the presence of the jury shall be
21 accompanied by a declaration from the moving party that includes the following: (1) a clear
22 identification of the specific matter alleged to be inadmissible and/or prejudicial; (2) a
23 representation to the Court that the subject of the motion in limine has been discussed with
24 opposing counsel, and that opposing counsel has either indicated that such matter will be
25 mentioned or displayed in the presence of the jury before it is admitted in evidence or that
26 counsel has refused to stipulate that such matter will not be mentioned or displayed in the
27 presence of the jury unless and until it is admitted in evidence; and (3) a statement of the
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1 specific prejudice that will be suffered by the moving party if the motion in limine is not
2 granted.

3 (d) Unless ordered by the Court, no supplemental or separate memorandum of
4 points and authorities shall be filed by either party in connection with any motion in limine.

5 (e) The Court will not consider any motion in limine in the absence of a joint
6 motion or a declaration from counsel for the moving party establishing that opposing
7 counsel: (1) failed to confer in a timely manner; (2) failed to provide the opposing party's
8 portion of the joint motion in a timely manner; or (3) refused to sign and return the joint
9 motion after the opposing party's portion was added.

10 (f) The failure of any counsel to comply with or cooperate in the foregoing
11 procedures will result in the imposition of sanctions, including a resolution of the issue
12 against the party refusing to cooperate.

13 7. Pretrial Conference and Trial Setting. Compliance with the requirements of Local
14 Rule 16 is mandatory. Counsel shall submit carefully prepared Memoranda of Contentions
15 of Fact and Law (which may also serve as the trial briefs) and Proposed Pre-Trial
16 Conference Order ("PTCO") in accordance with the provisions of Local Rules 16-2.8
17 through 16-6. The Proposed Pre-Trial Conference Order shall conform to the example set
18 forth in Appendix A to the Local Rules, modified as necessary to comply with this order.

19 The Memoranda of Contentions of Fact and Law, Exhibit Lists, and Witness Lists
20 shall be served and filed no later than fourteen (14) days before the Pre-Trial Conference.
21 The Proposed Pre-Trial Conference Order shall be filed fourteen (14) days before the Pre-
22 Trial Conference.

23 The Proposed Pre-Trial Conference Order must contain a Table of Contents. Place
24 in all capital letters and in bold the separately numbered headings for each category in the
25 PTCO. Under paragraph 1, list each claim, counterclaim, or defense that has been dismissed
26 or abandoned. In multiple party cases where not all claims or counterclaims will be
27 prosecuted against all remaining parties on the other side, please specify to which party each
28 claim or counterclaim directed. The factual issues in dispute should track the elements of a

1 claim or defense upon which the jury would be required to make findings. Counsel should
2 state issues in ultimate fact form, not as evidentiary fact issues (i.e., “was the defendant
3 negligent,” “was defendant’s negligence the proximate cause of plaintiff’s injury;” not “was
4 the plaintiff standing on the corner of 5th and Spring at 10:00 a.m. on May 3”). Issues of
5 law should state legal issues upon which the Court will be required to rule after the Pre-Trial
6 Conference, including during the trial, and should not list ultimate fact issues to be
7 submitted to the trier of fact.

8 In drafting the PTCO, the Court expects that counsel will attempt to agree on and
9 set forth as many non-contested facts as possible. The Court will normally read the
10 uncontested facts to the jury at the start of the trial. Carefully drafted and comprehensively
11 stated stipulation of facts will reduce the length of trial and increase jury understanding of
12 the case.

13 If expert witnesses are to be called at trial, each party must list and identify its
14 respective expert witnesses, both retained and non-retained. Failure of a party to list and
15 identify an expert witness in the Proposed Pre-Trial Conference Order shall preclude a party
16 from calling that expert witness at trial.

17 This case has been placed on calendar for a Final Pretrial Conference (“PTC”)
18 pursuant to F. R. Civ. P. 16 and Local Rule 16-1, unless the PTC was expressly waived at
19 the Scheduling Conference by the Court. Unless excused for good cause, each party
20 appearing in this action shall be represented at the PTC and all pretrial meetings of counsel,
21 by lead trial counsel. The failure to attend the PTC or to submit the required pretrial
22 documents may result in the dismissal of the action, striking the answer and entering a
23 default, and/or the imposition of sanctions.

24 A continuance of the Final Pretrial Conference at counsel’s request or stipulation is
25 highly unlikely. Counsel should plan to do the necessary pretrial work on a schedule which
26 will insure its completion with time to spare before the Final Pretrial Conference.
27 Specifically, failure to complete discovery work, including expert discovery, is not a ground
28 for a continuance.

1 Compliance with the requirements of Local Rules 16-1 to 16-13 is required by the
2 Court. Carefully prepared Memoranda of Contentions of Fact (which may also serve as the
3 trial brief) and a proposed Final Pretrial Conference Order shall be submitted in accordance
4 with the provisions of Local Rule 16-6 and the form of the proposed Final Pretrial
5 Conference Order shall be in conformity with the format set forth in Appendix A to the
6 Local Rules.

7 At the PTC, counsel should be prepared to discuss means of streamlining the trial,
8 including, but not limited to: bifurcation, presentation of non-critical testimony by
9 deposition excerpts, stipulations as to the content of testimony, presentation of testimony on
10 direct examination by declaration subject to cross-examination, and qualification of experts
11 by admitted resumes. In rare cases where the PTC is waived by the Court, counsel must
12 follow Local Rule 16-10.

13 8. **Summary of Witness Testimony and Time Estimates.** Counsel shall prepare a list
14 of their witnesses, including a brief summary (two to three paragraphs) of each witness'
15 expected testimony and an estimate of the length of time needed for direct examination; and
16 whether the witness will testify by deposition or in person. Counsel shall exchange these
17 lists with opposing counsel. **Counsel shall jointly file a single list of witness testimony
18 summaries, including estimates for direct examination of their own witnesses and
19 estimates for cross-examination of opposing witnesses.** These statements shall be filed at
20 the time counsel file the Proposed Pre-Trial Conference Order, i.e., fourteen (14) days
21 before the Pre-Trial Conference. A copy of the Joint Trial Witness Form is attached to this
22 Order.

23 If a party desires to offer deposition testimony into evidence at trial, he shall
24 designate only those relevant portions of same which he wishes to read at trial and advise
25 opposing counsel of same. Opposing counsel shall then designate those relevant portions of
26 such deposition which he wishes to offer in evidence. All objections to any such testimony
27 shall be made in writing and filed at the same time counsel file the Proposed Pre-Trial
28 Conference Order so the Court may consider whether ruling on such objections will either

1 facilitate the conduct of the trial or result in the disposition of certain evidentiary matters
2 that may assist continuing settlement negotiations.

3 9. Jury Instructions and Verdict Forms. Fourteen (14) days prior to counsel's Rule
4 16 pre-trial meeting, counsel shall exchange proposed jury instructions (general and special)
5 and special verdict forms (if applicable). Seven (7) days prior to the Rule 16-2 meeting,
6 counsel shall exchange any objections to the instructions and special verdict forms. Prior to,
7 or at the time of the Rule 16 meeting, counsel shall meet and confer with the goal of
8 reaching agreement on one set of joint jury instructions and one special verdict form.

9 The parties should make every attempt to agree upon the jury instructions before
10 submitting them to the Court. The Court expects counsel to agree on the substantial
11 majority of jury instructions, particularly when pattern instructions provide a statement of
12 applicable law. When the Manual of Model Civil Jury Instructions for the Ninth Circuit
13 provides a version of an applicable requested instruction, the parties should submit the most
14 recent version of the Model instruction. Where language appears in brackets in the model
15 instruction, counsel shall select the appropriate text and eliminate the inapplicable bracketed
16 text. Where California law applies, counsel should use the current edition of the Judicial
17 Council of California Civil Jury Instructions ("CACI"). If neither of the above sources is
18 applicable, counsel are directed to use the instructions from O'Malley, Grenig & Lee
19 (formerly Devitt, et al.), Federal Jury Practice and Instructions (latest edition). Each
20 requested jury instruction shall cover only one subject or principle of law and shall be
21 numbered and set forth in full on a separate page, citing the authority or source of the
22 requested instruction (except for the "clean" jury copy discussed below).

23 When the parties disagree on an instruction, the party opposing the instruction
24 must attach a short statement (one to two paragraphs) supporting the objection, and the party
25 submitting the instruction must attach a short statement supporting the instruction. Each
26 statement should be on a separate page and should follow directly after the disputed
27 instruction.

28

1 The parties ultimately must submit one document or, if the parties disagree over
2 any proposed jury instructions, two documents. If the parties submit two documents, those
3 documents shall consist of: (1) a set of Joint Proposed Jury Instructions and (2) a set of
4 Disputed Jury Instructions, along with reasons supporting and opposing each disputed
5 instruction in the format set forth in the previous paragraph.

6 The parties must file proposed jury instructions fourteen (14) days before the Pre-
7 Trial Conference. If the court is closed that day, counsel shall file the proposed instructions
8 the preceding Friday. No later than 5:00 p.m. on the date such instructions are due, the
9 parties must submit conformed courtesy copies to the Court's courtesy box located outside
10 the entrance to chambers on the Spring Street level of the U.S. Courthouse. Counsel shall
11 also submit a copy of the proposed jury instructions to the Court's ECF e-mail address in
12 WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier
13 versions) in accordance with this paragraph and the previous paragraph.

14 The Court will send a copy of the instructions into the jury room for the jury's use
15 during deliberations. Accordingly, in addition to the file copies described above, the e-mail
16 containing the jury instructions shall contain a "clean set" of Joint Proposed and/or Disputed
17 Jury Instructions, containing only the text of each instruction set forth in full on each page,
18 with the caption "Court's Instruction No. __" (eliminating titles, supporting authority,
19 indication of party proposing, etc.).

20 An index page shall accompany all jury instructions submitted to the Court. The
21 index page shall indicate the following:

22 (a) The number of the instruction;
23 (b) A brief title of the instruction;
24 (c) The source of the instruction and any relevant case citations; and
25 (d) The page number of the instruction.

26 EXAMPLE:

27 Number	28 Title	27 Source	28 Page
1	Trademark-Defined	9th Cir. 15.3.2	7

1 (15 U.S.C. § 1127)

2 Along with the jury instructions, counsel shall submit any necessary special verdict
3 form fourteen (14) days before the Pre-Trial Conference and e-mail any such proposed
4 special verdict form in WordPerfect format (X6 or earlier versions) or Microsoft Word
5 (Word 2010 or earlier versions) to the Court's ECF e-mail address.

6 10. Voir Dire Questions. Counsel may, but need not, submit brief proposed voir dire
7 questions for the jury at the Pre-Trial Conference. The Court will conduct its own voir dire
8 after consulting any proposed voir dire submitted by counsel.

9 11. Joint Statement of the Case. Counsel shall submit a joint statement of the case at
10 the Pretrial Conference. The joint statement of the case will be read to the prospective panel
11 of jurors prior to the commencement of voir dire. The statement should not exceed one
12 page. The statement shall be filed with the Court at the Pre-Trial Conference.

13 12. Exhibits. The parties shall file their witness lists and exhibits lists in accordance
14 with Local Rule 16. Counsel are to assemble their exhibits by placing them in three-ring
15 binders labeled on the spine portion of the binder showing both the volume number and the
16 exhibit numbers. Each exhibit shall be separated by a tabbed divider on the right side.
17 Counsel shall provide original exhibits for the Courtroom Deputy Clerk and a duplicate set
18 for the judge. The original exhibits shall be tagged with the appropriate exhibit tags in the
19 upper or lower right corner of the first page of each exhibit. Each binder shall contain a
20 Table of Contents. Counsel must comply with Local Rule 26-4 when numbering the
21 exhibits. The Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, California
22 can supply counsel with appropriate exhibit tags.

23 13. Pre-Trial Exhibit Stipulation. The parties shall prepare a Pre-Trial Exhibit
24 Stipulation which shall contain each party's numbered list of trial exhibits, with objections,
25 if any, to each exhibit including the basis of the objection and the offering party's response.
26 All exhibits to which there is no objection shall be deemed admitted. All parties shall
27 stipulate to the authenticity of exhibits whenever possible, and the Pre-Trial Exhibit

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1 Stipulation shall identify any exhibits whose authenticity has not been stipulated to and the
2 specific reasons for the party's failure to stipulate.

3 The Stipulation shall be substantially in the following form:

4 Pre-Trial Exhibit Stipulation

5 Plaintiff's Exhibits

6 <u>Number</u>	7 <u>Description</u>	8 <u>Objection</u>	9 <u>Response to Objection</u>
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10 Defendant's Exhibits

11 <u>Number</u>	12 <u>Description</u>	13 <u>Objection</u>	14 <u>Response to Objection</u>
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15 The Pre-Trial Exhibit Stipulation shall be filed at the same time as counsel files the
16 Proposed Pre-Trial Conference Order. Failure to comply with this paragraph shall constitute
17 a waiver of all objections.

18 The Court requires the following to be submitted to the Courtroom Deputy Clerk
19 on the first day of trial:

- 20 (1) The original exhibits with the Court's exhibit tags. Plaintiff shall use
21 yellow tags; defendant shall use blue tags. Each tag shall be stapled to
22 the front of the exhibit on the upper right corner and include the case
23 number, case name, and exhibit number.
- 24 (2) One bench book with a copy of each exhibit for the Court's use, tabbed
25 as described above; a copy of the witness lists).
- 26 (3) Three (3) copies of exhibit lists. The exhibit list should also be
27 submitted to the Court's ECF e-mail address in both a PDF version and
28 a WordPerfect(X6 or earlier versions) or Microsoft Word (Word 2010
or earlier versions) version.
- (4) Three (3) copies of witness lists in the order in which the witnesses will
be called to testify.

1 All counsel are to meet no later than fourteen (14) days before trial to discuss and
2 agree to the extent possible on issues including foundation and admissibility.

3 14. Findings of Fact and Conclusions of Law. For a non-jury trial, counsel for each
4 party shall file and serve proposed findings of fact and conclusions of law fourteen days
5 before trial. The parties should also e-mail these proposed findings of fact and conclusions
6 of law in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or
7 earlier versions) to the Court's ECF e-mail address. Counsel for each party shall then:

8 (1) Underline or highlight in red the portions which it disputes;
9 (2) Underline or highlight in blue the portions which it admits; and
10 (3) Underline or highlight in yellow the portions which it does not dispute,
11 but deems irrelevant.

12 Counsel may agree with a part of a finding or conclusion, disagree with a part of it
13 and/or consider a part of it irrelevant.

14 The parties should then file and serve their respective objections to the other
15 party's proposed findings of fact and conclusions of law. Courtesy copies of the marked
16 copies shall be delivered to the courtesy box next to the entrance to chambers on the Spring
17 Street level of the U.S. Courthouse, 312 North Spring Street, by 12:00 noon of the business
18 day following filing.

19 15. Settlement. Local Rule 16-15.2 provides that the Settlement Conference shall be
20 conducted not later than 45 days before the Pretrial Conference. The Court believes that in
21 most cases completion of all discovery and dispositive motions will help the parties assess
22 their positions before they embark on the costly pre-trial process. However, in many cases,
23 the parties find it more difficult to settle after they have incurred the cost of all discovery
24 and motion practice. Accordingly, the Court strongly encourages counsel and the parties to
25 pursue settlement earlier.

26 Notwithstanding the provisions of Local Rule 16-15.5, unless the parties have
27 received prior approval by the Court, lead trial counsel and each party shall appear at the
28 settlement proceeding in person or, in the case of a corporation or other non-governmental

1 entity, by a corporate representative with final authority to settle the case and who is
2 knowledgeable about the facts of the case. Representatives of insurers with decision-making
3 authority are also required to attend the settlement proceedings in person unless their
4 presence is expressly excused by the Court. The Court's requirement that lead trial counsel,
5 parties, corporate representatives, and insurer representatives must appear at the settlement
6 proceedings in person unless they have been expressly excused by the Court applies to
7 individuals located both within and outside the Central District of California.

8 The Court has a keen interest in helping the parties achieve settlement. If the
9 parties believe that it would be more likely that a settlement would be reached if they
10 conduct settlement conference at an earlier time than that specified by the Court, they should
11 conduct it at that time. In any event, the parties must together file a single Joint Status
12 Report re Settlement at the time they file the Proposed Pretrial Order.

13 The Court will not conduct settlement conferences in non-jury cases which the
14 Court will try. In jury cases, the Court will conduct a settlement conference at the parties'
15 request if three conditions exist:

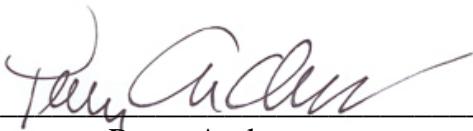
16 1. The parties are satisfied that the fact issues in the case will be tried to a jury;
17 2. All significant pre-trial rulings which Court must make have been made; and
18 3. The parties desire the Court to conduct the conference, understanding that if
19 settlement fails, the Court will preside over the trial of the case.

20 16. Sanctions. The failure to attend the pretrial conference or to submit in conformity
21 with this order, the jury instructions, pre-trial exhibit stipulation, joint statement of the case,
22 voir dire questions, summary of witness testimony and times estimates, proposed Pretrial
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1 Conference Order or the memorandum of contentions of fact and law may result in the
2 dismissal of the action, striking the answer and entering default and/or the imposition of
3 sanctions.

4 IT IS SO ORDERED.

5 Dated: July 23, 2015


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Percy Anderson
UNITED STATES DISTRICT JUDGE

Revised: 10/29/2013

JOINT TRIAL WITNESS ESTIMATE FORM

CA _____
SE: _____

TRIAL DATE: _____

	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X- EXAMINER 'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
1					
	TOTAL ESTIMATES THIS PAGE:				

Instructions:

- (1) List witnesses (last name first); (2) For description, be extremely brief, e.g., "eyewitness to accident." Or "expert on standard of care."
- (3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour. E.g., if you estimate 20 minutes, make it .25. An

estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in "Comments" column. E.g., "Needs interpreter." (5) Entries may be in handwriting if very neat and legible.